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ABSTRACT

The book contain pertinent articles on various subjects related to collective bargaining. It was developed and the materials specially written for use by instructors in a collective bargaining course designed to assist public sector managers in attaining a stable and productive labor relations environment. Each article has been keyed to the relevant point in the instructor's manual. Each article has also been assigned a number; the article is designated as "RN" to denote "Reference Number," a roman numeral which corresponds to the unit in which it is used, and an arabic numeral which places it in sequence with the rest of the materials in the unit. The units are: The Collective Bargaining Process: An Overview (8 articles); Why and How Workers Join Unions (4 articles); Petition, Election, and Recognition Stages (2 articles); The Negotiations Process (6 articles); and Contract Administration (4 articles). (Author/MS)

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THE EMERGENCE
OF
PUBLIC SECTOR COLLECTIVE BARGAINING

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

RN I-1

THE EMERGENCE OF PUBLIC SECTOR COLLECTIVE BARGAINING

INTRODUCTION

Trade Union membership among employees of all levels of government – federal, state, local – experienced a phenomenal rate of growth during the decade of the 1960's. The early years of the 1970's show no lessening of this trend. This growth is the result of many change factors including (1) the nature and make-up of the American economy, (2) the growing role of government in our society, (3) the legal status of public sector unionism, (4) the attitudes and demographics of public employees, and (5) new attitudes and techniques on the part of many unions and employee associations. This paper will relate to and analyze this wide-spread emergence of public sector collective bargaining.

EARLY HISTORY OF PUBLIC SECTOR UNIONISM

Union membership and activity among employees of government is traced to the early days of this Republic. Employees of Naval Shipyards and Army Arsenals organized into unions during the early part of the 19th century. The first recorded evidence of a government employee work stoppage occured in 1835-36, when employees at the Washington and Philadelphia Navy Yards struck for the ten-hour day and for general redress of their grievances. Organization of these workers and other public employees during this period was localized and concentrated primarily among craft employees in the building, metal, printing, and maritime trades. There were no national unions, as such, during this period; however, loosely coordinated government employee job actions, demonstrations, and political agitation resulted in improved working conditions. Among these were:

1840 – President Van Buren issued an Executive Order establishing the 10-hour day for Federal employees.

1861 – Congress passed legislation providing that wages of Navy Yard employees should be based on the prevailing rate in private establishments in the general vicinity of the Navy Yards.

1868 – The 8-hour day with no loss of pay was established for Federal employees.

1883 – Congress passed the Pendleton Act (Civil Service) establishing the Merit System in the Federal Service.

The last years of the 19th Century and the early ones of the 20th Century saw the formation of national unions of public employees. The National Association of Letter Carriers was established in 1889 as the first national postal union. Postal clerks also formed a national union in 1889. In 1904, the International Association of Machinists formed District No. 44 to administer the affairs of its Federal employee members. Many craft unions with public employee members had participated in the founding convention of the American Federation of Labor (AFL) in 1886, and in 1909 some of these formed the Metal Trades Department.

In 1906, the United Federation of Postal Clerks joined the AFL, becoming the first exclusively Federal union to do so. In 1913, the National Alliance of Postal Employees (now the National Alliance of Postal and Federal Employees) was organized as an industrial union of postal employees taking into membership all postal employees regardless of craft identity.

In 1917, the AFL chartered the National Federation of Federal Employees. NFFE was a unique phenomenon on the Federal scene at the time because it, too, was granted an industrial jurisdiction with the right to accept into membership any Federal government worker, irrespective of craft or occupational speciality. In 1931, NFFE withdrew from the American Federation of Labor over a difference of opinion concerning the appropriateness of wide-spread government use of position classification. The AFL countered by chartering another national government-wide union, the American Federation of Government Employees (AFGE) that same year.

On the state and local level, many of the craft unions accepted into membership appropriate craft employees. In 1916, the AFL chartered the American Federation of Teachers (AFT) and in 1936, the American Federation of State, County, and Municipal Employees

(AFSCME). Government employee associations and independent unions also were established. Some were organized as strictly local organizations; others functioned on a national basis.

EARLY LEGAL STATUS

Public sector unionism, like its private sector counterpart, has historically had a difficult and tenuous status in the eyes of the law. Trade unions were originally treated as "criminal conspiracies" under Anglo-Saxon common law. The first break in this doctrine of unions as criminal conspiracies, per se, occured in 1842 when the Massachusetts Supreme Court ruled that a union's legality must be judged on its actions and goals rather than on its mere existence. Other states' courts eventually followed this decision.

During the administrations of Presidents Theodore Roosevelt and William Howard Taft, a series of "gag rules" were issued at the Federal level. These Executive Orders prohibited Federal employees, either individually, or collectively through their organizations, from lobbying in Congress regarding pay, working conditions, or other matters. In addition, they specified that Federal employees were not to " . . . respond to any request from either House of Congress except through or as authorized by the agency head concerned." In response to these "gag rules" Congress enacted the Lloyd-LaFollette Act in 1912, granting postal employees (and, by extension, all Federal employees) the right to form and join labor organizations, petition or lobby Congress for redress of their grievances, and to furnish information to members of Congress. The Lloyd-LaFollette Act remains, with the exception of the laws barring strikes against the government, the only Federal statute on labor-management relations with government-wide application to the Federal Service.

The Kiess Act of 1924 established the principle of collective bargaining over wages for the printing trades employees of the Government Printing Office. Employees of the Alaskan National Railroad, the Tennessee Valley Authority, and scattered units of the Department of the Interior have had collective bargaining rights dating to the 1930's. However, when Congress enacted the National Labor Relations Act (Wagner Act) in 1935, establishing for the first time the public policy that "employees shall have the right to organize and bargain collectively," public employees were excluded from its coverage.

Some states permitted public employee union membership through legislation or Attorneys General decisions; others prohibited it. During the formative growth years of private sector collective bargaining, no state provided a legal basis and/or administrative machinery for public sector collective bargaining; all states prohibited striking by public employees, by statute or common law. When Congress amended the NLRA in 1947 with the Taft-Hartley Amendments, its sole reference to public employees was the following:

> "It shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government Corporations to participate in any strike. Any individual employed by the United States or any such agency, who strikes, shall not be eligible for reemployment for three years by the United States or any such agency."

This ban was codified in 1955 into Title V of U.S. Code, and striking against the Federal government was also made a felony punishable by a fine of $1,000 and imprisonment up to a year.

EARLY GOALS

Although denied the legal right to collective bargaining granted to their private sector counterparts, early public employee organizations survived and grew in numbers and influence. Often victims of political patronage and/or refugees from the unstable economic periods of high unemployment, public employees and their unions looked to merit system legislation as the means to provide a measure of job security. Patronage dispensers saw unionization of public employees and the establishment of merit systems as a threat to their control of public jobs. With the enactment of civil service merit system legislation, public employee unions sought its extention and refinement. They also sought to promote and maintain efficiency in the public service and to advance the interest of public employees.

Their primary method of operation was lobbying. Unions in the Federal service, especially the postal unions, maintained an effective lobby on Capitol Hill. They experienced some success in improving

wages, working conditions, pensions, and correcting inequities in the Federal service. At the same time, many of these organizations undertook political action programs to provide the necessary political support for their legislative activities. Similar methods were employed at the state and local levels of government.

Many early civil service advocates assumed that enactment of merit system laws was sufficient to solve individual employee problems and to define employee-employer relationships. However, most of these laws did not initially provide a method for handling employee grievances and correcting unsatisfactory conditions of employment. They related almost exclusively to appointment and promotions based on merit and fitness and discharge for cause with appeal to a civil service board. They provided no avenue, no procedure, for the redress of public employee grievances.

Higher wages, increased job security and other improved conditions of employment won by private sector unions had an impact on public employee organizations. Though merit systems provided a measure of job security, public employees discovered that a collective bargaining contract in industry often provided more security. Others saw the trade union movement in the public sector as a source of strength in the struggle against the spoils system. Collective bargaining contracts in industry provided automatic wage increases and also wage increases geared to the cost of living. Wages in the public sector generally lagged behind those paid for similar jobs in industry and few provisions existed for increases in the cost of living. Private sector unions had won premium pay for overtime and employer-paid fringe benefits. In the public sector, wage increases were often geared to a forthcoming election or periodic civil service merit increases. Additionally, the methods employed by the government in improving working conditions were one-sided. The public employer unilaterally determined any change. No system was available for employee participation in these determinations. To many public employees, the distinctions between a public and private employer seemed academic.

As the orientation of public employee organizations changed, their membership grew and so did their power. This power was exercised to stabilize union membership and obtain a measure of security for the union. Successful efforts were made to secure payroll deduction of members' dues with direct payment to the union treasury. In the 1950's, many statutes and ordinances were enacted and executive orders issued which provided "check-off." Automatic deduction of dues helped to stabilize membership and provided a regular source of needed income. Regular income helped pay for the staff to organize more members.

GROWTH OF PUBLIC SECTOR EMPLOYMENT

Public employees were certainly there to be organized. Beginning after World War II and accelerating at an ever faster rate, the public sector of our economy steadily increased its share of total employment vis-a-vis the private. Increasing population, increasing affluence amidst persistent poverty, increasing demands for new and/or increased services coupled with a revolution in traditional production industries caused by cybernetics contributed to the shift from blue collar production-oriented employment to white and grey collar service-oriented jobs. During the 20 year period from 1951 to 1971, all levels of public employment increased from just under six million to approximately 13.3 million. This growth rate of 112 percent can be compared to a growth rate of only 41% for the non-government sector of our economy. Today, six out of every ten new jobs are government jobs. Most of this growth has occurred, not in Federal government employment which grew only 15% from 1951 to 1971, but in state and local jobs which grew by 175% during the twenty year period.

THE EXPLOSION OF PUBLIC SECTOR COLLECTIVE BARGAINING

In the Federal sector, the National Federation of Federal Employees (Ind.) had experienced the following growth: 1920 – 38,000; 1935 – 65,000; 1939 – 75,000; 1960 – 53,000. Its AFL-CIO rival the American Federation of Government Employees (AFGE) had experienced a similar pattern: 1936 – 18,000; 1940 – 30,000; 1960 – 70,000. In fact, by 1961, according to a study by the President's Task Force on Employee-Management Relations, there were forty labor organizations with membership among Federal employees and dealing with Federal agencies. Included among these – in addition to those already mentioned – were organizations such as the National Association of Alcohol and Tobacco Tax Field Officers, the National Customs

Service Association, the Overseas Education Association, the Organization of Professional Employees of the Department of Agriculture, the International Association of Fire Fighters, the American Federation of Technical Engineers, the National Alliance of Postal Employees, the International Association of Machinists, the International Brotherhood of Electrical Workers, the American Federation of State, County and Municipal Employees, the Air Traffic Controllers Association, and the International Printing Pressman and Assistants' Union of North America. It should be noted that these organizations cover the spectrum of various types of employee organizations – craft unions, postal unions, associations, unions based on occupation or employing agency, and industrial-type unions. Many were affiliated with AFL-CIO, and others were non-affiliated (independent). It has been estimated that approximately one-third of all Federal employees were members of unions or employee associations at this time.

At the state and local level more notable trends had developed. By 1959, the American Federation of Teachers (AFT), AFL-CIO had approximately 50,000 members. Increasing numbers of local transportation systems had become public, bringing into the public sector large numbers of members of the transit unions. The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO had reached the 200,000 member mark by 1962. The International Association of Fire Fighters (IAFF), AFL-CIO also had a large membership. Non-public sector AFL-CIO unions had also become increasingly aware of public employees. As the private sector economy continued its change, many unions experienced decreasing rates of growth or actual losses of membership. Thus, the public sector came to be looked upon as a potential area for growth. Two unions in particular should be cited in this regard – The Laborers International Union, AFL-CIO, and the Service Employees Internation Union, AFL-CIO. Independent employee organizations and "professional associations" shared in this membership growth and these organizations were also, obviously, subject to many of the same pressures and conditions faced by the unions.

Thus, by the late 1950's and early 1960's, several factors which had evolved over the years seemed to come together to form a "critical mass" which needed only some additional catalyst to ensure the explosion. That impetus came from three executive and legislative actions which occurred within a relatively brief period of time. (1) In 1958, Mayor Robert Wagner of New York City, (appropriately, the son of the author of the National Labor Relations Act which had granted private sector employees collective bargaining rights in 1935) issued an executive order providing a measure of collective bargaining to the employees of that city. (2) The following year, 1959, saw the state legislature of Wisconsin enact provisions which extended to county and municipal employees of that state the protection and administrative machinery of its state Labor Relations Act.

(3) Approximately one-third of all Federal employees belonged to unions or employee associations by 1961; thus, the parties to a labor-management relationship were there, and to some extent, on a permissive basis, they were dealing with one another. What was needed was a bridge to span the gap resulting from the absence of a government-wide system of rights and responsibilities for collective dealings between the unions and the employing agencies. This "bridge" was destined to be President John F. Kennedy's Executive Order 10988, "Employee Management Cooperation in the Federal Service."

Shortly after his inauguration in 1961, Kennedy appointed a Task Force chaired by Secretary of Labor, Arthur Goldberg and including John Macy, Chairman of the Civil Service Commission. The Task Force collected and analyzed available information on current practices in labor relations, held hearings in Washington and six cities at which union leaders and members of the public presented their views, distributed questionnaires to agencies and unions and evaluated the responses, and prepared several reports that provided background information for policy development.

In developing its recommendations, the Task Force looked to experience in the private sector, other publi jurisdictions, and the labor relations systems of foreign countries. It concluded that while there was much to learn from other systems, and particularly the private sector model, only some of those policies and practices should immediately be applied.

On November 31, 1961, the Task Force reported its findings along with specific recommendations. The findings and recommendations became the basis for Executive Order 10988 which was issued January 17, 1962. Executive Order 10988 established a basic pattern for labor-management relations (called at

that time, "employee-management relations") for Federal employee labor organizations and Federal agency management. It provided for three levels of union recognition: informal, formal, and exclusive, based on the representative strength of the union. The concepts of the exclusive bargaining unit and the negotiated agreement were introduced. The right of Federal employees to join or not join a union of their choice was affirmed. A bar was placed on the negotiation of a union shop arrangement; however, a measure of union security was introduced with provision for union dues withholding. (Application of this recommendation had to be delayed pending clarification of statutory authority for such arrangements). The resolution of impasses was left to the parties; however, the use of arbitration in interest disputes was barred. The Department of Labor was assigned responsibilities to assist in the resolution of representation disputes. Responsibility for implementation of the program was vested in the head of each department and agency, with the Civil Service Commission given a leadership role in providing guidance, management training, and program evaluation.

These three actions, which occurred in New York City, Wisconsin, and the Federal sector, considered together, can be identified as providing the initial sparks which enabled the public sector collective bargaining explosion to occur. While it can most certainly be argued that the explosion would have occurred anyway, these executive pronouncements and legislative enactments established legal precedents and procedures for collective bargaining in government.

For the first few years following the issuance of E. O. 10988, statistics on Federal union growth was preponderantly among postal workers, who had been well organized even before E. O. 10988. However, by mid 1963, 180,000 non-postal workers were in exclusive bargaining units; by 1965, the number had risen to 320,000; and by 1967, 630,000 non-postal Federal employees were exclusively represented by unions, 339,000 blue-collar and 291,000 salaried white collar employees. Combined, they represented 29 percent of all non-postal employees of the executive branch of the Federal government.

Following the executive order in New York City and the legislation in Wisconsin, and especially after the Federal Executive Order, many state and local governments began to respond with some form of legal authorization for dealing collectively with employees. The nature of this authorization took many shapes and forms. Some state and local executives issued executive orders. Others obtained favorable Attorneys–General decisions. Other jurisdictions produced legislative enactments. The nature and scope of these enactments varied. Some were comprehensive in terms of classes of employees covered, scope of bargaining, and administrative apparatus. Others were less comprehensive covering, for instance, only local employees, only teachers, or only fire fighters. Many provided only permissive language, permitting collective bargaining but not making it mandatory. Some required the parties to "meet and confer," rather than collectively bargain.

The public sector unions and the use of collective bargaining continued to grow. In some cases, this growth was because of legislation; in other cases the growth was in spite of inadequate or no legislation. By 1965, the AFT had over 100,000 dues-paying members; by 1967 AFSCME climbed past 300,000; in 1968, the Fire Fighters totaled over 130,000. This increasing growth of public sector unions and the demands for collective bargaining on the part of public employees were both the results of and causes of significant changes.

Faced with increasing demands for improvements in wages, hours, and other terms and conditions of employment from the rank and file members, and often at the same time faced with public managers unwilling or unable to grant such demands, public sector unions became increasingly more militant. In 1958, there were only fifteen work stoppages of public employees involving a loss of 7,520 man days. In 1966, there were 142 strikes, a nine-fold increase involving 105,000 workers and a loss of 455,000 man days. Two years later the number had almost doubled – to 254 strikes involving 202,000 workers and a loss of one-half million man days. These disputes occurred despite the fact that no state allowed its employees the right to strike and some provided criminal and/or financial penalties for doing so.

The increase in members and militancy on the part of the public sector unions also had tremendous impact on the traditional public employee associations. For example, the National Education Association, which counts over a million classroom teachers in its membership, had existed for over a half-century as a "professional association." The NEA in its early history emphasized activities centering on better schools

and improved status for teachers. It frowned upon any overt activity of state and local affiliates lobbying for higher teachers' salaries and shunned contacts with the labor movement as inconsistent with its professionalism. However, goaded by the militant success of its AFL-CIO rival, the American Federation of Teachers, first in New York City and then in most large urban school systems, the NEA did an about-face. 1961 was the first time the NEA convention called for "discussions" between local school boards and its local affiliates. By 1962, NEA began using the terms "professional negotiations" and "professional sanctions" to back them up. By 1965, NEA had gone on record in favor of exclusive recognition and in 1967 replaced its previous disdain of work stoppages and resolved to support striking affiliates. Similar changes in goals, attitudes and methods occurred within the American Nurses Association, the Fraternal Order of Police as they did in the many state and local government employee associations, such as the New York Civil Service Employees Association, the California State Employees Association, the California League of County Employees Associations, each with over 100,000 members. Thus, today most employee associations cannot be significantly differentiated from the traditional unions in terms of methods, goals or militancy.

The Federal unions also continued their rapid growth and, in many instances, revealed that they too were becoming more militant. By late 1969, the final year that E. O. 10988 was in force, exclusive union representation covered just under one and a half-million Federal employees – 54% of all executive branch employees including postal employees. The six largest non-postal unions in the Federal government represented exclusively the following number of employees:

American Federation of Government Employees (AFGE), AFL-CIO	482,357
Metal Trades Council (MTC), AFL-CIO	75,243
National Federation of Federal Employees (NFFE), Ind.	58,676
National Association of Government Employees (NAGE), Ind.	58,239
National Association of Internal Revenue Employees (NAIRE), Ind.	38,518
International Association of Machinists (IAM), AFL-CIO	34,139

Executive Order 10988 was widely praised and well accepted by unions, agencies, members of Congress and the public. Under its provisions, unions representing Federal employees gained in membership strength, acquired membership stability through dues withholding, and obtained representation status for broad segments of the Federal employee population.

But what was a satisfactory program in the early 1960's became awkward and poorly adapted as the program moved to maturity. It began to creak under its own weight. Dissatisfaction with the provisions of the Order were expressed by unions and management. The dissatisfactions were not the same, but the problems were common.

Late in President Lyndon B. Johnson's administration, a review committee was established to look at the Federal labor management program. The "Wirtz Committee" thoroughly examined the Federal program. It found much that was praiseworthy, but it also found room for improvement. It held open hearings in Washington, D.C. in late October 1967, with more than fifty agency and labor organization representatives and individuals presenting their views. In addition, more than fifty other organizations submitted written statements. The Committee considered, among other matters, proposed changes in levels of recognition, a central agency to establish policy and interpret the order, the role of supervisors, the scope of bargaining, and dispute resolution by independent third parties.

By late spring of 1968, the Committee had reached substantial agreement on recommendations to the President, and its report and recommendations were substantially completed. However, no action was taken under the Johnson Administration.

With the new administration, the question of changes in the labor-management relations program again came up for reconsideration. President Nixon appointed a committee which used as its basis for analysis the report of the "Wirtz Committee" and the testimony of agencies and unions at hearings which had been conducted by that committee. The Report and Recommendations of the Interagency Study Committee were forwarded with a letter of transmittal to the President on September 10, 1969. President Nixon accepted the recommendations, and on October 29, 1969, issued Executive Order 11491, "Labor-Management Relations in the Federal Service," effective on January 1, 1970.

Executive Order 11491 retained the basic principles and objectives of Federal labor-management relations established in 1962 by Executive Order 10988. It

was evolutionary in nature, preserving the continuity of the system of relationship and unfair labor practice disputes assigned to the Assistant Secretary of Labor for Labor-Management Relations; the creation of the Federal Service Impasses Panel to be the ultimate authority for the resolution of bargaining impasses; the elimination of multiple levels of recognition; and the clarification of the status of supervisors under the program. Other major provisions related to extension of coverage; exclusion of certain categories of security and agency internal audit personnel; special provisions on recognition for guards and "professionals"; incorporation of provisions for binding arbitration of employee grievances and disputes arising over the terms of an agreement; use of official time for negotiation of an agreement; changes in procedures for certification of representation; strengthening of the standards of conduct and union reporting requirements; revisions of the code of fair labor practices; changes in the scope of negotiation and agreement approval provisions; and the incorporation of procedures for the resolution of negotiability disputes.

Under E.O. 11491 union growth continued, as did union militancy. Today, of major Federal unions, only the National Federation of Federal Employees (NFFE) maintains a "no-strike" pledge in its Constitution; ten years ago all Federal unions had them. Federal employees have done more than just remove "no-strike" pledges: they have engaged in strikes and other job actions. In recent years the following known strikes have occurred among Federal employees:

1968
- Hunter's Point Naval Shipyard, San Francisco (Cafeteria Workers)
- St. Elizabeth Hospital, Washington, D.C.
- TVA, Athens, Alabama

1969
- Kingsbridge Postal Station, Bronx, N.Y.
- Air Controllers, A National Strike, Two Days

1970
- FAA-PATCO
- Post Office
- D.C. Nurses' Association

1971
- D.C. Sanitation

1972
- D.C. Teachers
- IRS – Detroit Service Center
- D.C. Jail Guards

The largest of these strikes, the 1970 postal strike which involved over 200,000 employees, resulted in the passage of the Postal Reorganization Act which, among other things, removed postal employees from coverage under E.O. 11491, and extended to them the protections and rights of the NLRA except for the right to strike and broadened the scope of bargaining to include wages, hours and all other terms and conditions of employment except pensions and union security.

WHERE WE STAND TODAY

At this time unions and union-like associations represent more than one-third of all public employees in exclusive bargaining units. This can be compared with exclusive union representation of approximately 24 percent of all employees in this country. In the Federal government, unions represented 56% of the civilian executive branch non-postal work force as of November 1, 1973; 88% of all postal employees; 84% of all blue collar (wage grade) employees; and 47% of all white collar (General Schedule) employees. These precentages of representation are even higher when non-eligibles – managers, supervisors, etc. – are factored out.

At the state and local level, at least 38 states have some type of public employee relations legislation or executive order covering one or more employee classes, types or occupations. Many local political jurisdictions also have similar ordinances or orders.

In those units of government where there is no legal basis for collective bargaining, de facto bargaining does occur because of union political strength.

Today, AFSCME has over 700,000 dues paying members and represents in collective bargaining over 1,000,000 public employees. The Fire Fighters have more than 160,000 members, a 30% growth in six years. The Laborers International Union and the Service Employees International Union, both primarily private sector unions with total memberships in excess of 500,000, today each count over 100,000 public employees among their ranks. The NEA has over 1.5 million members, while the AFT

has more than 400,000 members. Similar statistics could be cited for other unions and associations.

Another phenomenon occurring today is the closing of ranks and consolidation of union power. In 1971 five postal unions merged to form the American Postal Workers Union and today the APWU has discussed merger with the Communication Workers of America (CWA) which predominantly represents private sector telephone employees. The Professional Air Traffic Controllers affiliated with the Marine Engineers Benevolent Association, AFL-CIO, a small but wealthy union that has also recently absorbed several city and county employee associations. Both AFSCME and the SEIU have recently granted charters to formerly independent employee associations in California, Hawaii, Rhode Island and other locations. AFSCME, the NTEU, and the NEA have also formed a coalition for political action and lobbying. At the state and local level several affiliates of NEA and AFT have merged, the largest of these bringing nearly 200,000 teachers in New York State into a single organization.

A final point on where we stand today is the fact that seven states – Pennsylvania, Hawaii, Montana, Minnesota, Oregon, Florida, and Alaska – now permit by law a limited right to strike.

THE FUTURE

It can be anticipated that collective bargaining and public employee unionism will continue to grow at all levels of government. Some currently with no legislation will either voluntarily or under pressure pass enabling public sector collective bargaining legislation. States with current laws will refine them, establishing more administrative machinery, more clearly define roles, bargaining units, and unfair practices, and grant some right to strike. As unions continue growing by organizing the unorganized and mergers, their resources and expertise for bargaining and lobbying will also increase. One of their continuing goals will be national legislation covering public employee management relations and the creation of a NLRB-type Public Employee Relations Board.

A GLOSSARY

OF

COLLECTIVE BARGAINING TERMS

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

A GLOSSARY OF COLLECTIVE BARGAINING TERMS

AGENCY SHOP

A provision in a collective agreement which requires that all employees in the negotiating unit who do not join the exclusive representative pay a fixed amount monthly, usually the equivalent of organization dues, as a condition of employment. Under some arrangements, the payments are allocated to the organization's welfare fund or to a recognized charity. An agency shop may operate in conjunction with a modified union shop. (See Union Shop.)

AGREEMENT

See Collective Bargaining. A written agreement between an employer (or an association of employers) and an employee organization (or organizations), usually for a definite term, defining conditions of employment (conditions, etc.), rights of employees and the employee organization, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

AMERICAN ARBITRATION ASSOCIATION (AAA)

A private nonprofit organization established to aid professional arbitrators in their work through legal and technical services, and to promote arbitration as a method of settling commercial and labor disputes. The AAA provides lists of qualified arbitrators to employee organizations and employers on request.

AMERICAN FEDERATION OF LABOR – CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL–CIO)

A federation of approximately 130 autonomous national/international unions created by the merger of the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO) in December 1955. More than 80 percent of union members in the United States are members of unions affiliated with the AFL-CIO. The initials AFL–CIO after the name of a union indicate that the union is an affiliate.

ANNUAL IMPROVEMENT FACTOR

Wage increases granted automatically each contract year, which are based upon increased employee productivity.

ARBITRATION (VOLUNTARY, COMPULSORY, ADVISORY)

Method of settling employment disputes through recourse to an impartial third party, whose decision is usually final and binding. Arbitration is voluntary when both parties agree to submit disputed issues to arbitration and compulsory if required by law. A court order to carry through a voluntary arbitration agreement is not generally considered as compulsory arbitration. Advisory arbitration is arbitration without a final and binding award.

ARBITRATOR (IMPARTIAL CHAIRMAN)

An impartial third party to whom disputing parties submit their differences for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

AUTHORIZATION CARD

A statement signed by an employee authorizing an organization to act as his representative in dealings with the employer, or authorizing the employer to deduct organization dues from his pay (checkoff). (See Card Check.)

BARGAINING RIGHTS

Legally recognized right to represent employees in negotiations with employers.

BARGAINING UNIT

Group of employees recognized by the employer or group of employers, or designated by an authorized

agency as appropriate for representation by an organization for purposes of collective negotiations.

BOYCOTT

Effort by an employee organization, usually in collaboration with other organizations, to discourage the purchase, handling, or use of products of an employer with whom the organization is in dispute. When such action is extended to another employer doing business with the employer involved in the dispute, it is termed a secondary boycott.

BUMPING (ROLLING)

Practice that allows a senior employee (in seniority ranking or length of service) to displace a junior employee in another job or department during a layoff or reduction in force. (See Seniority.)

BUSINESS AGENT (UNION REPRESENTATIVE)

Generally, a full-time paid employee or official of a local union whose duties include day-to-day dealing with employers and workers, adjustments of grievances, enforcement of agreements, and similar activities. (See International representative.)

BUSINESS UNIONISM ("BREAD-AND-BUTTER" UNIONISM)

Union emphasis on higher wages and better working conditions through collective bargaining rather than political action or radical reform of society. The term has been widely used to characterize the objectives of the trade union movement in the United States.

CALL-IN PAY (CALLBACK PAY)

Amount of pay guaranteed to a worker recalled to work after completing his regular work shift. Call-in pay is often used as a synonym for reporting pay. (See Reporting Pay.)

CARD CHECK

Procedure whereby signed authorization cards are checked against a list of employees in a prospective negotiating unit to determine if the organization has majority status. *The employer may recognize the organization on the basis of this check without a formal election.* Card checks are often conducted by an outside party, e.g., a respected member of the community. (See Authorization card.)

CERTIFICATION

Formal designation by a government agency of the organization selected by the majority of the employees in a supervised election to act as exclusive representative for all employees in the bargaining unit.

CHECK-OFF (PAYROLL DEDUCTION OF DUES)

Practice whereby the employer, by agreement with the employee organization (upon written authorization from each employee where required by law or agreement), regularly withholds organizational dues from employees' salary payments and transmits these funds to the organization. The check-off is a common practice and is not dependent upon the existence of a formal organizational security clause. The check-off arrangement may also provide for deductions of initiation fees and assessments. (See Union security.)

CLOSED SHOP

A form of organizational security provided in an agreement which binds the employer to hire and retain only organization members in good standing. The closed shop is prohibited by the Labor Management Relations Act of 1947 which applies, however, only to employers and employees in industries affecting interstate commerce.

COLLECTIVE BARGAINING

A process whereby employees as a group and their employers make offers and counter-offers in good faith on the conditions of their employment relationship for the purpose of reaching a mutually acceptable agreement, and the execution of a written

document incorporating any such agreement if requested by either party. Also, a process whereby a representative of the employees and their employer jointly determine their conditions of employment.

COMPANY UNION

An employee organization that is organized, financed, or dominated by the employer and is thus suspected of being an agent of the employer rather than of the employees. Company unions are prohibited under the Labor Management Relations Act of 1947. The term also survives as a derogatory charge leveled against an employee organization accused of being ineffectual.

COMPULSORY ARBITRATION

(See Arbitration.)

CONCILIATION

(See Mediation.)

CONSULTATION

An obligation on the part of employers to consult the employee organization on particular issues before taking action on them. In general, the process of consultation lies between notification to the employee organization, which may amount simply to providing information, and negotiation, which implies agreement on the part of the organization before the action can be taken.

CONTINUOUS NEGOTIATING COMMITTEES (INTERIM COMMITTEES)

Committees established by employers and employee organizations in a collective negotiating relationship to keep an agreement under constant review, and to discuss possible changes in it long in advance of its expiration date. The continuous committee may provide for third-party participation.

CONTRACT BAR

A denial of a request for a representation election, based on the existence of a collective agreement. Such an election will not be conducted by the National Labor Relations Board if there is in effect a written agreement which is binding upon the parties, has not been in effect for more than a "reasonable" time, and its terms are consistent with the National Labor Relations Act. "Contract bars" in state government are established by state laws and state agencies.

COOLING-OFF PERIOD

A period of time which must elapse before a strike or lockout can begin or be resumed by agreement or by law. The term derives from the hope that the tensions of unsuccessful negotiation will subside in time so that a work stoppage can be averted.

CRAFT UNION

A labor organization which limits membership to workers having a particular craft or skill or working at closely related trades. In practice, many so-called craft unions also enroll members outside the craft field, and some come to resemble industrial unions in all major respects. The traditional distinction between craft and industrial unions has been substantially blurred. (See Industrial Union.)

CRAFT UNIT

A bargaining unit composed solely of workers having a recognized skill, for example, electricians, machinis or plumbers.

CREDITED SERVICE

Years of employment counted for retirement, severance pay, seniority. (See Seniority.)

CRISIS BARGAINING

Collective bargaining taking place under the shadow of an imminent strike deadline, as distinguished from extended negotiations in which both parties enjoy

ample time to present and discuss their positions. (See Continuous bargaining committees.)

DECERTIFICATION

Withdrawal by a government agency of an organization's official recognition as exclusive negotiating representative.

DISPUTE

Any disagreement between employers and the employee organization which requires resolution in one way or another; e.g., inability to agree on contract terms or unsettled grievances.

DOWNGRADING (DEMOTION)

Reassignment of workers to tasks or jobs requiring lower skills and with lower rates of pay.

DUAL UNIONISM

A charge (usually a punishable offense) leveled at a union member or officer who seeks or accepts membership or position in a rival union, or otherwise attempts to undermine a union by helping its rival.

DUES DEDUCTION

(See Checkoff.)

ELECTION

(See Representation election.)

ESCALATOR CLAUSE

Provision in an agreement stipulating that wages are to be automatically increased or reduced periodically according to a schedule related to changes in the cost of living, as measured by a designated index, or, occasionally, to another standard, e.g., an average earnings figure. Term may also apply to any tie between an employee benefit and the cost of living, as in a pension plan.

ESCAPE CLAUSE

General term signifying release from an obligation. One example is found in maintenance-of-membership arrangements which give union members an "escape period" during which they may resign from membership in the union without forfeiting their jobs.

EXCLUSIVE BARGAINING RIGHTS

The right and obligation of an employee organization designated as majority representative to negotiate collectively for all employees, including nonmembers, in the negotiating unit.

FACT-FINDING BOARD

A group of individuals appointed to investigate, assemble, and report the facts in an employment dispute, sometimes with authority to make recommendations for settlement.

"FAVORED NATIONS" CLAUSE

An agreement provision indicating that one party to the agreement (employer or union) shall have the opportunity to share in more favorable terms negotiated by the other party with another employer or union.

FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

An independent federal agency which provides mediators to assist the parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation." Mediation services are also provided by several state agencies.

FREE RIDERS

A derogatory term applied to persons who share in the benefits resulting from the activities of an employee organization but who are not members of, and pay no dues to, the organization.

FRINGE BENEFITS

Generally, supplements to wages or salaries received by employees at a cost to employers. The term encompasses a host of practices (paid vacations, pensions, health and insurance plans, etc.) that usually add to something more than a "fringe," and is sometimes applied to a practice that may constitute a dubious "benefit" to workers. No agreement prevails as to the list of practices that should be called "fringe benefits." Other terms are often substituted for "fringe benefits" include "wage extras," "hidden payroll," "nonwage labor costs," and "supplementary wage practices." The Bureau of Labor Statistics uses the phrase "selected supplementary compensation or remuneration practices," which is then defined for survey purposes.

GRIEVANCE

Any complaint or expressed dissatisfaction by an employee in connection with his job, pay, or other aspects of his employment. Whether such complaint or expressed dissatisfaction is formally recognized and handled as a "grievance" depends on the scope of the grievance procedure.

GRIEVANCE PROCEDURE

Typically a formal plan, specified in a collective agreement, which provides for the adjustment of grievances through discussions at progressively higher levels of authority in management and the employee organization, usually culminating in arbitration if necessary. Formal plans may also be found in companies and public agencies in which there is no organization to represent employees.

IMPARTIAL CHAIRMAN (UMPIRE)

An arbitrator employed jointly by an employee organization and an employer, usually on a long-term basis, to serve as the impartial party on a tripartite arbitration board and to decide all disputes or specific kinds of disputes arising during the life of the contract. The functions of an impartial chairman often expand with experience and the growing confidence of the parties, and he alone may constitute the arbitration board in practice.

INDUSTRIAL UNION (VERTICAL UNION)

A union that represents all or most of the production, maintenance and related workers, both skilled and unskilled, in an industry, or company. Industrial unions may also include office, sales, and technical employees of the same companies. (See Craft union.)

INJUNCTION (LABOR INJUNCTION)

Court order restraining one or more persons, corporations, or unions from performing some act which the court believes would result in irreparable injury to property or other rights.

INTERNATIONAL REPRESENTATIVE (NATIONAL REPRESENTATIVE, FIELD REPRESENTATIVE)

Generally, a full-time employee of a national or international union whose duties include assisting in the formation of local unions, dealing with affiliated local unions on union business, assisting in negotiations and grievance settlements, settling disputes within and between locals, etc. (See Business agent.)

INTERNATIONAL UNION

A union claiming jurisdiction both within and outside the United States (usually in Canada). Sometimes the term is loosely applied to all national unions; that is, "international" and "national" are used interchangeably.

JOB POSTING

Listing of available jobs, usually on a bulletin board, so that employees may bid for promotion or transfer.

JOINT BARGAINING

Process in which two or more unions join forces in negotiating an agreement with a single employer.

JURISDICTIONAL DISPUTE

Conflict between two or more employee organizations over the organization of a particular establishment or whether a certain type of work should be performed by members of one organization or another. A jurisdictional strike is a work stoppage resulting from a jurisdictional dispute.

LABOR GRADES

One of a series of rate steps (single rate or a range of rates) in the wage structure of an establishment. Labor grades are typically the outcome of some form of job evaluation, or of wage-rate negotiations, by which different occupations are grouped, so that occupations of approximately equal "value" or "worth" fall into the same grade and, thus, command the same rate of pay.

LABOR MANAGEMENT RELATIONS ACT OF 1947 (TAFT-HARTLEY ACT)

Federal law, amending the National Labor Relations Act (Wagner Act), 1935, which, among other changes, defined and made illegal a number of unfair labor practices by unions. It preserved the guarantee of the right of workers to organize and bargain collectively with their employers, or to refrain from such activities, and retained the definition of unfair labor practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. Other major exclusions are: Employers subject to the Railway Labor Act, agricultural workers, government employees, nonprofit hospitals, domestic servants, and supervisors. Amended by Labor-Management Reporting and Disclosure Act of 1959. See National Labor Relations Act; National Labor Relations Board; Unfair labor practices; Section 14 (b) Labor Management Relations Act of 1947.

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 (LANDRUM-GRIFFIN ACT)

A federal law designed "to eliminate or prevent improper practices on the part of labor organizations, employers," etc. Its seven titles include a bill of rights to protect members in their relations with unions; regulations of trusteeships; standards for elections; and fiduciary responsibility of union officers. The Labor Management Relations Act of 1947 was amended in certain respects by this act.

MAINTENANCE-OF-MEMBERSHIP CLAUSE

A clause in a collective agreement providing that employees who are members of the employee organization at the time the agreement is negotiated, or who voluntarily join the organization subsequently, must maintain their membership for the duration of the agreement, or possibly a shorter period, as a condition of continued employment. See Union security.

MANAGEMENT PREROGATIVES

Rights reserved to management, which may be expressly noted as such in a collective agreement. Management prerogatives usually include the right to schedule work, to maintain order and efficiency, to hire, etc.

MASTER AGREEMENT

A single or uniform collective agreement covering a number of installations of a single employer or the members of an employers' association. (See Multi-employer bargaining.)

MEDIATION (CONCILIATION)

An attempt by a third party to help in negotiations or in the settlement of an employment dispute through suggestion, advice, or other ways of stimulating agreement, short of dictating its provisions (a characteristic of arbitration). Most of the mediation in the United States in undertaken through federal and state mediation agencies. A mediator is a person who undertakes mediation of a dispute. Conciliation is synonymous with mediation.

MERIT INCREASE

An increase in employee compensation given on the basis of individual efficiency and performance..

MOONLIGHTING

The simultaneous holding of more than one paid employment by an employee, e.g., a full-time job and a supplementary job with another employer, or self-employment.

MULTI-EMPLOYER BARGAINING

Collective bargaining between a union or unions and a group of employers, usually represented by an employer association, resulting in a uniform or master agreement.

NATIONAL LABOR RELATIONS ACT OF 1935 (WAGNER ACT)

Basic federal act guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing. The Act also defined "unfair labor practices" as regards employers. It was amended by the Labor Management Relations Act of 1947 and the Labor-Management Reporting and Disclosure Act of 1959.

NATIONAL LABOR RELATIONS BOARD (NLRB)

Agency created by the National Labor Relations Act (1935) and continued through subsequent amendments. The functions of the NLRB are to define appropriate bargaining units, to hold elections to determine whether a majority of workers want to be represented by a specific union or no union, to certify unions to represent employees, to interpret and apply the Act's provisions prohibiting certain employer and union unfair practices, and otherwise to administer the provisions of the Act. (See Labor Management Relations Act of 1947.)

NATIONAL UNION

Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of government employees. See International union.

NO-STRIKE AND NO-LOCKOUT CLAUSE

Provision in a collective agreement in which the employee organization agrees not to strike and the employer agrees not to lockout for the duration of the contract. These pledges may be hedged by certain qualifications, e.g., the organization may strike if the employer violates the agreement.

OPEN-END AGREEMENT

Collective bargaining agreement with no definite termination date, usually subject to reopening for negotiations or to termination at any time upon proper notice by either party.

OPEN SHOP

A policy of not recognizing or dealing with a labor union, or a place of employment where union membership is not a condition of employment. (See Union security.)

PACKAGE SETTLEMENT

The total money value (usually quoted in cents per hour) of a change in wages or salaries and supplementary benefits negotiated by an employee organization in a contract renewal or reopening.

PAST PRACTICE CLAUSE

Existing practices in the unit, sanctioned by use and acceptance, that are not specifically included in the collective bargaining agreement, except, perhaps, by reference to their continuance.

PATTERN BARGAINING

The practice whereby employers and employee organizations reach collective agreements similar

to those reached by the leading employers and employee organizations in the field.

PAYROLL DEDUCTIONS

Amounts withheld from employees' earnings by the employer for social security, federal income taxes, and other governmental levies; also may include organization dues, group insurance premiums, and other authorized assignments. (See Check-off.)

PICKETING

Patrolling, usually near the place of employment, by members of the employee organization to publicize the existence of a dispute, persuade employees and the public to support the strike, etc. Organizational picketing is carried on by an employee organization for the purpose of persuading employees to join the organization or authorize it to represent them. Recognitional picketing is carried on to compel the employer to recognize the organization as the exclusive negotiating agent for his employees. Informational picketing is directed toward advising the public that an employer does not employ members of, or have an agreement with, an employee organization.

PREVENTIVE MEDIATION

Procedures designed to anticipate and to study potential problems of employment relations. These procedures may involve early entry into employment disputes before a strike threatens.

PROBATIONARY PERIOD

Usually a stipulated period of time (e.g., 30 days) during which a newly hired employee is on trial prior to establishing seniority or otherwise becoming a regular employee. Sometimes used in relation to discipline, e.g., a period during which a regular employee, guilty of misbehavior, is on trial. Probationary employee- a worker in a probationary period. Where informal probation is the practice, a worker who has not yet attained the status of regular employee may be called a temporary employee.

RAIDING (NO-RAIDING AGREEMENT)

Term applied to an organization's attempt to enroll members belonging to another organization or employees already covered by a collective agreement negotiated by another organization, with the intent to usurp the latter's bargaining relationship. A no-raiding agreement is a written pledge signed by two or more employee organizations to abstain from raiding and is applicable only to signatory organizations.

RATIFICATION

Formal approval of a newly negotiated agreement by vote of the organization members affected.

REAL WAGES

Purchasing power of money wages, or the amount of goods and services that can be acquired with money wages. An index of real wages takes into account changes over time in earnings levels and in price levels as measured by an appropriate index, e.g., the Consumer Price Index.

RECOGNITION

Employer acceptance of an organization as authorized to negotiate, usually for all members of a negotiating unit.

REOPENING CLAUSE

Clause in a collective agreement stating the time or the circumstances under which negotiations can be requested, prior to the expiration of the contract. Reopenings are usually restricted to salaries and other specified economic issues, not to the agreement as a whole.

REPORTING PAY

Minimum pay guaranteed to a worker who is scheduled to work, reports for work, and finds no work available, or less work than can be done in the guaranteed period (usually 3 or 4 hours). Sometimes identified as "call-in pay." (See Call-in pay.)

REPRESENTATION ELECTION (ELECTION)

Election conducted to determine whether the employees in an appropriate unit (See Bargaining Unit) desire an organization to act as their exclusive representative.

RIGHT-TO-WORK LAW

Legislation which prohibits any contractual requirement that an employee join an organization in order to get or keep a job.

RUNOFF ELECTION

A second election conducted after the first produces no winner according to the rules. If more than two options were present in the first election, the runoff may be limited to the two options receiving the most votes in the first election. (See Representation election.)

SENIORITY

Term used to designate an employee's status relative to other employees, as in determining order of promotion, layoff, vacation, etc. Straight seniority – seniority acquired solely through length of service. Qualified seniority – other factors such as ability considered with length of service. Departmental or unit seniority – seniority applicable in a particular department or agency of the town, rather than in the entire establishment. Seniority list – individual workers ranked in order of seniority. (See Superseniority.)

SHOP STEWARD (UNION STEWARD, BUILDING REPRESENTATIVE)

A local union's representative in a plant or department elected by union members (or sometimes appointed by the union) to carry out union duties, adjust grievances, collect dues, and solicit new members. Shop stewards are usually fellow employees, and perform duties similar to those of building representatives in public schools.

STANDARD AGREEMENT (FORM AGREEMENT)

Collective bargaining agreement prepared by a national or international union for use by, or guidance of, its local unions, designed to produce standardization of practices within the union's bargaining relationships.

STRIKE (WILDCAT, OUTLAW, QUICKIE, SLOWDOWN, SYMPATHY, SITDOWN, GENERAL)

Temporary stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. Wildcat or outlaw strike – a strike not sanctioned by union and one which violates a collective agreement. Quickie strike – a spontaneous or unannounced strike. Slowdown – a deliberate reduction of output without an actual strike in order to force concessions from an employer. Sympathy strike – strike of employees not directly involved in a dispute, but who wish to demonstrate employee solidarity or bring additional pressure upon employer involved. Sitdown strike – strike during which employees remain in the workplace, but refuse to work or allow others to do so. General strike – strike involving all organized employees in a community or country (rare in the United States). Walkout – same as strike.

STRIKE VOTE

Vote conducted among members of an employee organization to determine whether or not a strike should be called.

SUPERSENIORITY

A position on the seniority list ahead of what the employee would acquire solely on the basis on length of service or other general seniority factors. Usually such favored treatment is reserved to union stewards, or other workers entitled to special consideration in connection with layoff and recall to work.

SWEETHEART AGREEMENT

A collective agreement exceptionally favorable to a particular employer, in comparison with other contracts, implying less favorable conditions of

employment than could be obtained under a legitimate collective bargaining relationship.

TAFT-HARTLEY ACT

(See Labor Management Relations Act of 1947.)

UNFAIR LABOR PRACTICE

Action by either an employer or employee organization which violates certain provisions of national or state employment relations act, such as a refusal to bargain in good faith. Unfair labor practices strike – a strike caused, at least in part, by an employer's unfair labor practice.

UNION SECURITY

Protection of a union's status by a provision in the collective agreement establishing a closed shop, union shop, agency shop, or maintenance-of-membership arrangement. In the absence of such provisions, employees in the bargaining unit are free to join or support the union at will, and, thus, in union reasoning, are susceptible to pressures to refrain from supporting the union or to the inducement of a "free ride."

UNION SHOP

Provision in a collective agreement that requires all employees to become members of the union within a specified time after hiring (typically 30 days), or after a new provision is negotiated, and to remain members of the union as a condition of continued employment. Modified union shop – variations on the union shop. Certain employees may be exempted, e.g., those already employed at the time the provision was negotiated and who had not yet joined the union.

WAGNER ACT

(See National Labor Relations Act of 1935)

WELFARE PLAN (EMPLOYEE-BENEFIT PLAN)

Health and insurance plans and other type of employee-benefit plans. The Welfare and Pension Plans Disclosure Act (1958) specifically defines welfare plans for purposes of compliance, but the term is often used loosely in employee relations.

WHIPSAWING

The tactic of negotiating with one employer at a time, using each negotiated gain as a lever against the next employer.

WORK STOPPAGE

A temporary halt to work, initiated by workers or employer, in the form of a strike or lockout. This term was adopted by the Bureau of Labor Statistics to replace "strikes and lockouts." In aggregate figures, "work stoppages" usually means "strikes and lockouts, if any"; as applied to a single stoppage, it usually means strike or lockout unless it is clear that it can only be one. The difficulties in terminology arise largely from the inability of the Bureau of Labor Statistics (and, often, the parties) to distinguish between strikes and lockouts since the initiating party is not always evident.

ZIPPER CLAUSE

An agreement provision specifically barring any attempt to reopen negotiations during the term of the agreement. (See reopening clause.)

THE

COLLECTIVE BARGAINING

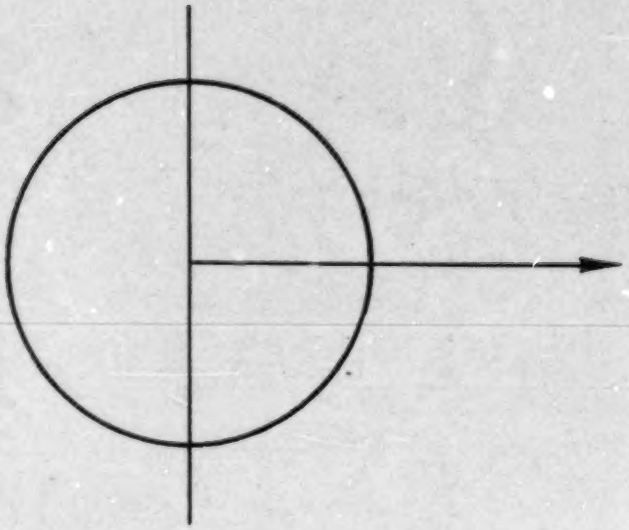
PROCESS

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

RN I-3

UNORGANIZED

STAGE

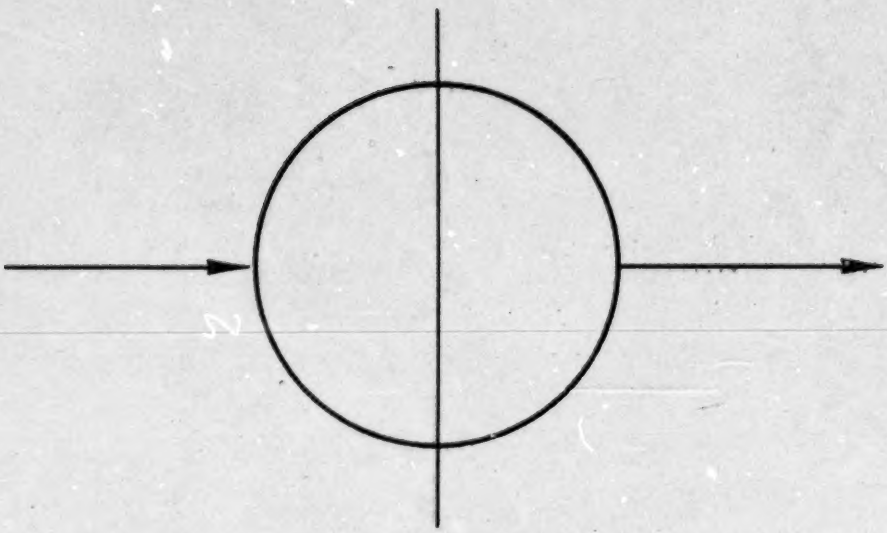


WHAT IS REQUIRED?

- DEVELOP MANAGEMENT POLICY AND PHILOSOPHY
- REVIEW PERSONNEL POLICIES AND PRACTICES
- REVIEW WORK RULES AND PRACTICES
- DEVELOP EMPLOYEE HANDBOOK
- DEVELOP "MANAGEMENT TEAM" [KEY]
- DEVELOP SYSTEM OF "INTRA-MANAGEMENT" COMMUNICATION

ORGANIZING

STAGE _____

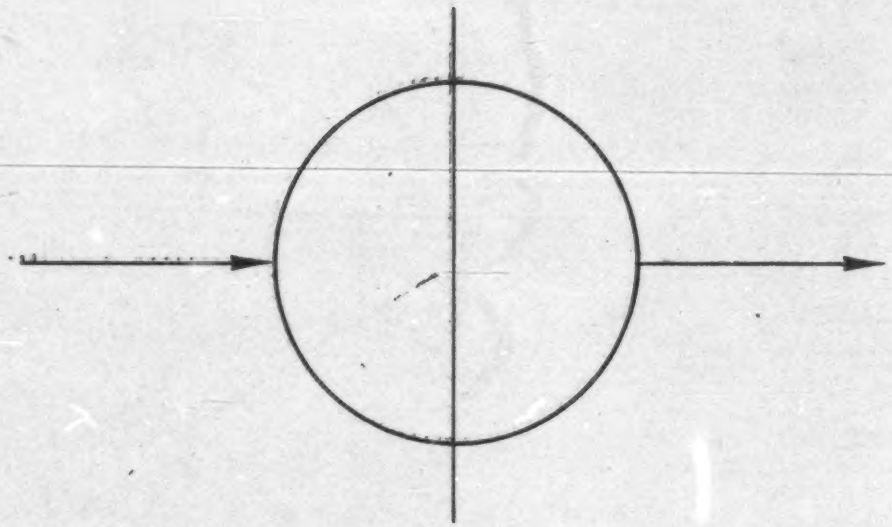


WHAT IS REQUIRED?

- UNDERSTANDING EMPLOYEE RIGHTS [KEY]
- UNDERSTANDING MANAGEMENT RIGHTS/RESPONSIBILITIES
  - NEUTRALITY [KEY]
  - UNFAIR LABOR PRACTICES [KEY]
- UNDERSTANDING LABOR ORGANIZATION RIGHTS

PETITION

STAGE

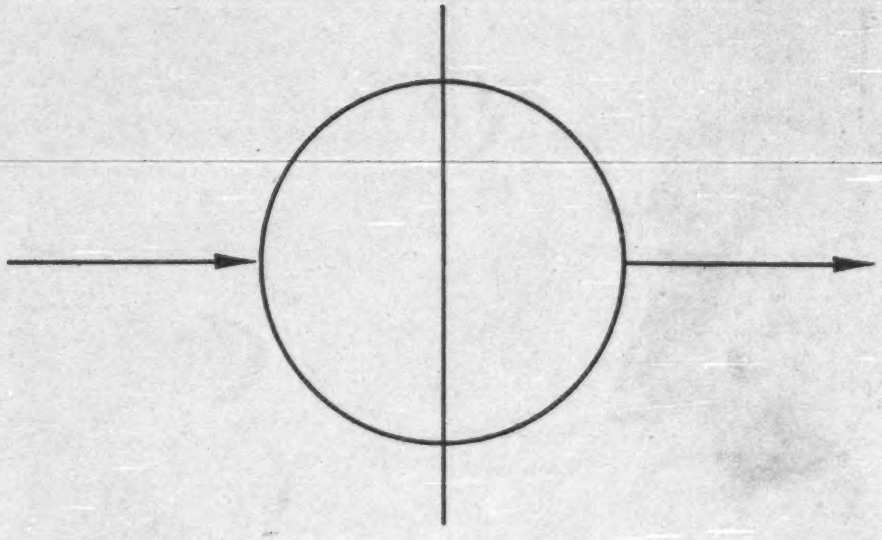


WHAT IS REQUIRED?

- EMPLOYEE "SHOW OF INTEREST" [KEY]
- AN "APPROPRIATE" BARGAINING UNIT [KEY]
  - EXCLUSIONS
  - COMMUNITY OF INTEREST, OTHER CRITERIA

ELECTION

STAGE



WHAT IS REQUIRED?

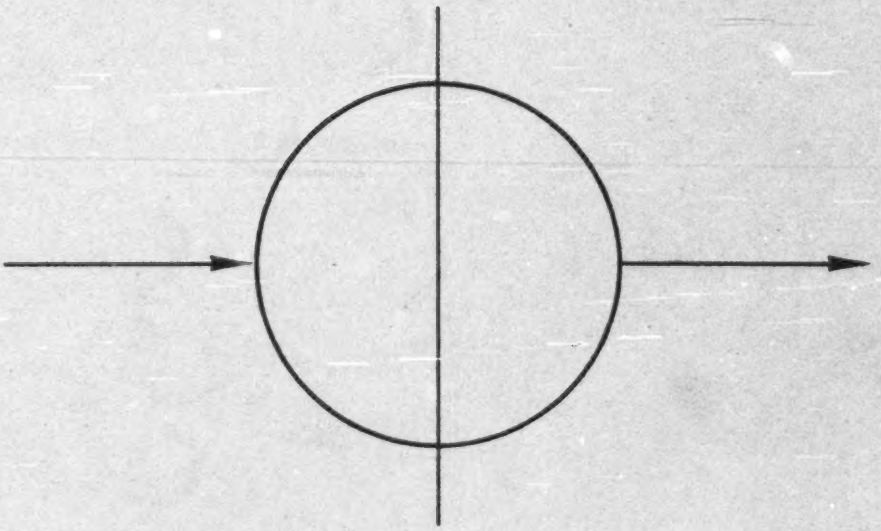
- ■ SECRET BALLOT ELECTION [KEY]
- ■ ELECTION AGREEMENT
  - ● GETTING OUT THE VOTE [KEY]

CERTIFICATION

AND

RECOGNITION

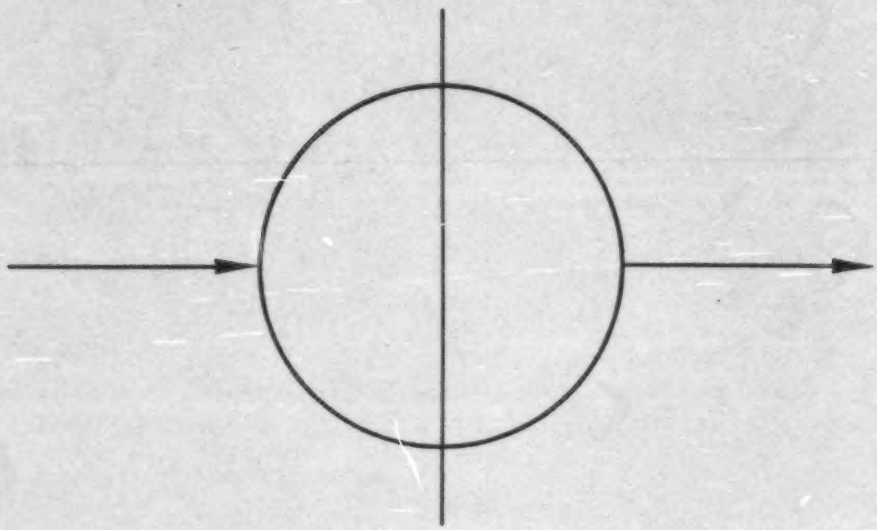
STAGE



WHAT IS REQUIRED?

- UNDERSTANDING "EXCLUSIVITY" [KEY]
  - LABOR ORGANIZATION RIGHTS/RESPONSIBILITIES
  - EMPLOYEE RIGHTS/RESPONSIBILITIES
  - MANAGEMENT RIGHTS/RESPONSIBILITIES

PREPARATION FOR NEGOTIATION STAGE

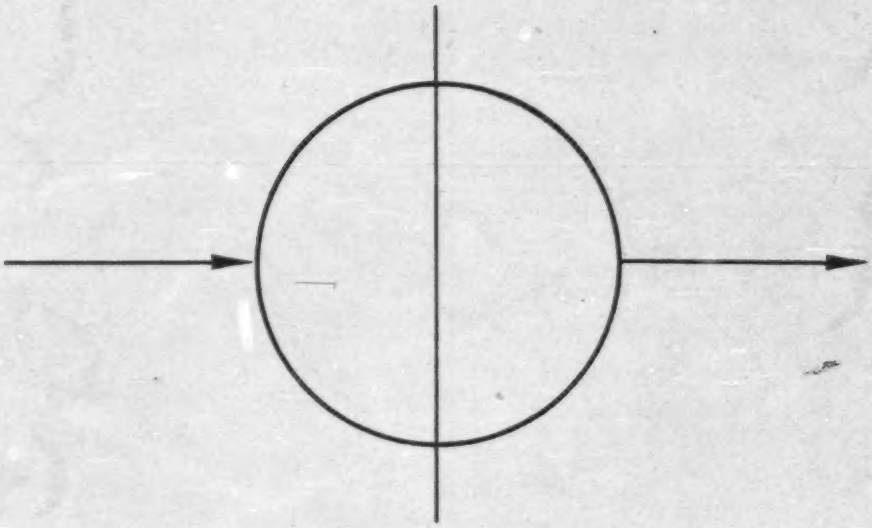


WHAT IS REQUIRED?

- POSITIVE MANAGEMENT APPROACH [KEY]
- SELECTION OF MANAGEMENT "NEGOTIATING TEAM" [KEY]
- DELEGATION OF AUTHORITY TO NEGOTIATE AND REACH AGREEMENT [KEY]
- ANTICIPATE UNION PROPOSALS
- PREPARE MANAGEMENT PROPOSALS AND COUNTERPROPOSALS [KEY]

NEGOTIATION

STAGE



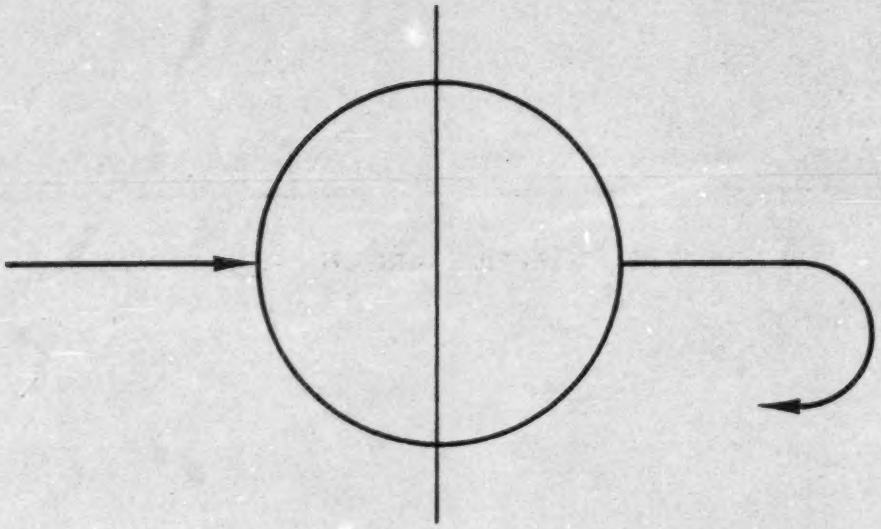
WHAT IS REQUIRED?

- NEGOTIATE IN "GOOD FAITH" [KEY]
- MANAGEMENT RIGHTS [KEY]
- PRODUCTIVITY AND COSTS [KEY]

CONTRACT

ADMINISTRATION

STAGE



WHAT IS REQUIRED?

- UNIFORM MANAGEMENT APPLICATION [KEY]
- GRIEVANCE PROCEDURE [KEY]
- THE MANAGEMENT TEAM

THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT

U. S. CIVIL SERVICE COMMISSION
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RN I-4

THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT

THE MANAGEMENT TEAM

With the advent of collective bargaining in the public sector, the responsibility for labor relations rests on the shoulders of all members of the management team. This team includes those in line management - supervisors, middle managers and executive managers. Others on the management team are members of the technical and support staff such as personnel/labor relations, legal, budget staff.

Throughout the collective bargaining process – from the pre-organizing stage through contract administration – each of these people must understand and implement various aspects of the appropriate labor law or order. The following chart lists some of management's responsibilities during the phases of collective bargaining:

1. Pre-Organization Phase

   a. Review personnel policies and practices
   b. Recommend and make changes
   c. Develop a positive labor-management relations philosophy, policy, strategy (including use of agency facilities, bargaining unit size, etc.)
   d. Establish and affirm chain of command or responsibility
   e. Establish effective two-way channels of communications
   f. Train management team
   g. Assure that employees understand their rights

2. Organization Phase

   a. Implement management strategy and policy
   b. Maintain communication lines
   c. Review and train management in "do's and don'ts"
   d. Provide advice and technical assistance
   e. Review union organizational activities
   f. Support bargaining unit appropriate from management's point of view
   g. Avoid unfair labor practices
   h. Prepare for hearings
   i. File petitions, exceptions, appeals, briefs, etc.

3. Preparation for negotiation phase

   a. Anticipate union demands and cost out
   b. Communicate with all levels of management to prepare management proposals based on need and cost out
   c. Select management bargaining team and spokesman
   d. Distribute and receive information from management team
   e. Develop data for negotiations
   f. Provide technical assistance and advice
   g. Develop strike contingency plan

4. Negotiation phase

   a. Establish procedural rules for bargaining
   b. Review union proposals and cost out
   c. Develop management negotiation positions
   d. Engage in bargaining
   e. Provide technical assistance and advice
   f. Be involved in communications to and from all members of management team
   g. Develop additional data, if necessary
   h. Make decisions regarding:
      Use of mediators (Federal Mediation & Conciliation Service, etc.)
      Use of other impasse procedures
      Unfair labor practices
   i. Cost out and determine final agreement

5. Contract administration period

   a. Train management team about meaning and effect of new contract
   b. Administer contract on day to day basis
   c. Process grievances
   d. Decide about use of arbitration procedure, if any
   e. Respond to strikes and militant job actions or threats
   f. Maintain records
   g. Maintain intra-management team communications

6. Contract re-negotiation period

a. Prepare for next negotiations

The chart below illustrates that the collective bargaining process impacts on all levels of management throughout its various stages:

CHANGES IN TRADITIONAL PATTERNS OF MANAGING

As the chart indicates, collective bargaining means additional responsibilities for management. It also means changes in traditional patterns of management practices.

Decision-Making

One change is evident in the traditional decision-making process. As soon as there is an exclusively-recognized union, decisions regarding personnel policies, practices and working conditions may no longer be made unilaterally by top management. At a minimum, management must consult with the union. Often it must negotiate. No longer can top management alone make such decisions; not even if it bases its decision on what it thinks the workers want or on what it thinks is best for the workers. Bilateralism means an end to such paternalism however well-intentioned. Workers, through their exclusive labor representatives, now have a right to share in decision-making.

A word of caution: Many public sector collective bargaining laws exclude supervisors from representation by a labor organization and from positions of leadership in it. If supervisors are to share in making the decisions which, often, they are charged with implementing, it must be as members of the management team. It is incumbent upon middle and executive managers to involve first and second-line supervisors so that they are, in fact, made integral members of the management team.

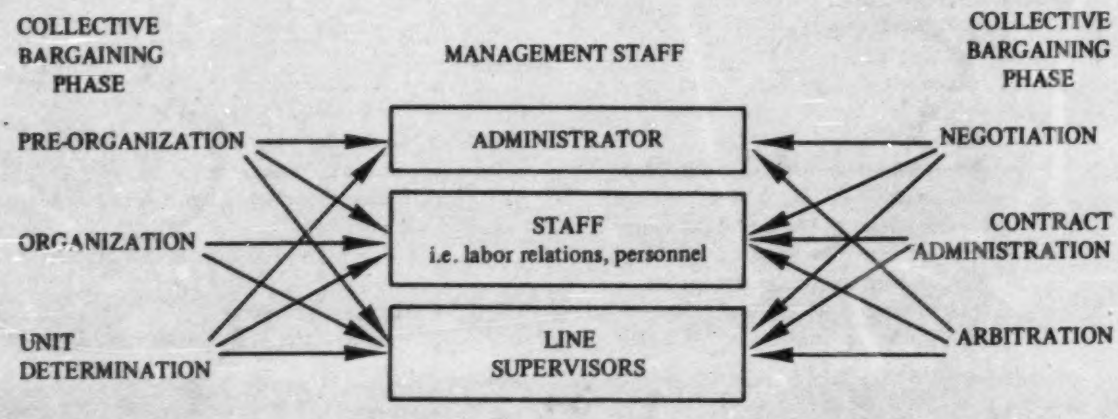
An aspect of this change in the pattern of decision-making is that the traditional complete and final authority of the agency is diminished. Many public sector laws mandate third-party intervention in certain areas. Many of these bodies are patterned after those established by the National Labor Relations Act governing interstate labor relations in the private sector.

Communications

Patterns of communications are also altered by collective bargaining. Communications systems are no longer used for decision-conveyance but, rather, are an integral part of the decision-making process. No longer do communications bring down the word from above. Instead, they involve a two-way flow of information and ideas.

With collective bargaining, communications are more open and complete, both between management and the employees through the elected representative, and among members of management.

FUNCTIONAL IMPLICATIONS OF COLLECTIVE BARGAINING ON MANAGEMENT TEAM



However, collective bargaining limits certain aspects of direct communications between management and employees. When there is an exclusively recognized collective bargaining agent, management is no longer free to solicit directly from employees their views regarding personnel policies, practices and working conditions. Such management actions may be judged to be unfair labor practices. Management must deal through and consult the exclusive representative.

Most all good collective bargaining agreements contain a negotiated grievance procedure, though it is not mandated in some governmental jurisdictions. The grievance procedure makes the contract a "living" document.

Relationships

As is indicated by much of what is said above, collective bargaining brings about changes in relat. nships. Supervisors who had been close to employees may be drawn away by the intervention of the union representative. Hopefully, the supervisors will guard against this but, equally as important, become closer to other members of the management team. The union representative is no longer just like any other employee. There are times when he is an equal, a peer. Finally, patterns of relationships are altered as the personal is augmented by the institutional.

ACCOUNTABILITY

The impact of collective bargaining can be seen clearly in a discussion of accountability. Traditionally, public managers have been accountable to other public managers and to something called "the public interest." Sometimes persons seeing themselves as representatives of "the public interest" attempt to get involved in the issue of the accountability of public managers. Mostly, though, public managers have answered only to each other.

With collective bargaining, though, public managers have a new kind of accountability to the employees. Management retains the right and the responsibility to manage. But now there is a union on the scene which has the right and responsibility to challenge management.

GUIDELINES FOR GOVERNMENT MANAGEMENT IN THE ORGANIZATION AND MANAGEMENT OF LABOR RELATIONS

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RN 1-5

GUIDELINES FOR GOVERNMENT MANAGEMENT IN THE ORGANIZATION AND MANAGEMENT OF LABOR RELATIONS

I. Management Framework

A. Objective: Develop and issue a clear statement of management policy and philosophy concerning labor relations

1. Need for Broad General Policy. As a means of providing all managers, supervisors and staff support with overall guidance in collective bargaining, the head of the unit of government should affirm in writing support for the jurisdiction's labor relations program and spell out the philosophy and approach to be followed in implementing it.

2. Content of Policy Statement. The statement should clearly define principles to be observed in management relations with unions. This involves such matters as management's commitment in the public interest to modern and progressive work practices, employee and union rights and responsibilities, management rights and responsibilities, high standards of employee performance, management's positive approach to third party resolution of disputes, improved well-being of employees through maximum appropriate participation in establishing personnel policies affecting them on the job, and the importance of sound labor relations to mission accomplishment.

3. Interface of Management Framework with Organization Framework. Management organization of labor relations activities should reflect the conviction that the growing dimensions of union involvement in the formulation and implementation of wages and working conditions affecting employees they represent must become an integral part of the approach to personnel management in order to maximize the cooperative and productive benefits of the relationship. There should be visible, top level commitment to the total personnel management program. Specific emphasis should be given in allocation and utilization of personnel management resources to the new dimensions of labor relations which continue to transform many personnel decisions from a unilateral to a bilateral process. Such a total integration of labor relations responsibilities in personnel management is reflected and intended throughout these Guidelines.

B. Objective: Prepare plans and resource estimates required to achieve labor relations goals

1. Labor relations program plan. Guided by its identified management policy and philosophy, each unit of government should prepare a comprehensive plan for achieving its labor relations objectives. Short-range planning period should cover the fiscal year about to begin and the subsequent budget year. Long-range planning period generally will cover the next five years. These plans should be the product of two specific steps, described below.

   a. State short-range and long-range labor relations program objectives. Units of government should prepare written program objectives for labor relations activities. These objectives should be formulated according to management's consensus of what are desirable and practical goals to accomplish through its labor relations effort with the understanding that management is only one of the parties to a bilateral relationship.

   Short-range objectives may, for example, be (1) reorganizing the personnel staff at the headquarters to provide more effective labor relations support for line staff; or (2) reviewing regulations relating to matters within the scope of bargaining to insure locus of authority rests at the most effective level for bilateral dealings between unions and managers.

Long-range objectives might include (1) seeking to enlist union support for general improvements in quality of public service and implementation of public policy through such matters as improved worker productivity, safe work conditions and practices or (2) strengthening line supervisor and middle management perception and performance of their role as management representatives.

b. Develop strategies to achieve desired labor relations objectives.

The other necessary step in development of labor relations plans is to establish priorities and methods by which these objectives are to be achieved. The short-range strategies resulting from this process generally will be more specific and more fully developed than those applied to the long-range labor relations objectives.

2. Develop a resource plan for labor relations activities for the fiscal year about to begin and for the subsequent budget year. Estimates for the personnel management function should reflect the requirements necessary to accomplish the labor relations objectives formulated according to the program planning steps outlined above. The resource estimates should be used as a management tool to guide the agency in its obligation of manpower and money toward meeting its current labor relations plan. Amount of funds appropriated may require adjustment of resource estimates, however the full estimate should serve as the basis for relating the planned labor relations activity with the associated expenditures. Indirect and overhead costs for this purpose should be included. Similarly, the portioned salary cost for labor relations activities performed by line managers as part of their normal functions should be included.

The budget estimate should include the annual salary cost of staff personnel involved in activities related directly to labor relations. Full-time and part-time personnel should be included roughly to the extent that they participate in labor relations activities.

Other significant costs that are related directly to the labor relations effort should be included such as training, expense of third-party procedures, consulting fees or staff travel.

C. Objective: Develop a systematic approach for planning agency labor relations training.

1. Identify labor relations training needs. To determine training needs, the manager should initially define, in some detail, the skills required to perform effectively the various labor relations functions in the unit of government. That is, with what degree of skill should the various levels of supervision and management in the organization be able to comprehend and apply the rights and responsibilities of management representatives under the labor relations policy. After defining required skills, the manager should inventory abilities possessed by present personnel as a guide to the magnitude of training needs.

2. Develop a program to meet the training needs. After training needs have been identified, alternative methods of meeting the needs should be considered. With each method, whether it be hiring skilled personnel, training current personnel internally or by outside means, or redistributing current skilled employees, cost estimates should be developed so the agency's needs may be met efficiently and economically with due consideration to long, as well as short, range objectives.

These estimates should include all relevant costs. Internal training, for example, should include costs of development, facilities, instructors, and participants.

D. Objective: Develop a systematic approach for planning and negotiating agreements

Successful negotiation of agreements requires systematic planning and high level attention.

Major areas of concern include, but are not limited to:

1. Select and train management's negotiating team.

2. Establish management's bargaining objectives and develop management proposals where appropriate. This must involve top and line management as well as total personnel management input.

3. Anticipate union proposals.

4. Attempt to merge management's objectives with anticipated union proposals for analysis.

5. Estimate impact of each proposal in terms of cost-benefit ratio, possible problems in administering it, compliance with the labor relations policy, employee well-being and performance, management effectiveness and mission accomplishment.

6. Settle on bargaining strategies and priorities, involving both line and staff input.

7. Assign management's negotiating team with appropriate authority to bind management to the terms of a labor-management agreement.

8. When mutual agreement is not possible, determine management position and representation in third-party proceedings.

9. Summarize the key negotiation proceedings for use in administration of the agreement and for future negotiation planning.

E. Objective: Conduct an annual review and evaluation of the Labor Relations Program

1. Report progress in meeting labor relations objectives. A system for evaluating progress should be established at the headquarters level. Each primary subdivision should be requested to submit an evaluation of its labor relations activities over the past year to headquarters. This report should cover progress made toward established program objectives and should highlight major problems which interfered with achieving those objectives. It should also discuss activities which were not included in the statement of objectives and analyze the nature of such activities for possible consideration in future plans. Evaluators should be careful not to measure program effectiveness solely against achievement of planned objectives.

   Events may have proved the objective unwise, untimely or unobtainable. An assessment should be made as to the appropriateness of the objectives and possible redirection. Finally, reports should discuss the extent to which actual expenditures exceeded or fell short of the budgeted expenditures for labor relations to assist management in subsequent planning and budgeting.

2. Evaluate labor relations training output. Labor relations training activity should be reviewed annually to evaluate its success in fulfilling skill needs. The review should focus, if possible, on the degree of skills increase on the part of those involved in the labor relations function. The revision of training materials, the need for further training or retraining, and the efficiency of the training function should also be considered. These qualitative analyses should be in addition to any reporting of numbers of persons trained, hours of training conducted, and other quantitative output measurements.

3. Review performance in bilateral negotiation of labor agreements. Using the record of negotiation proceedings prepared at the conclusion of each collective bargaining agreement as outlined above, management should determine the extent of its overall success in achieving the objectives set for its negotiators. This process should attempt to highlight strategies which have proved to be particularly effective in reaching agreements consistent with management's intentions, and to identify workable trade-offs. This process may also reveal areas in which management can take appropriate permissible unilateral steps to improve the conduct of its operations.

II. Organization Framework

A. Objective: Insure top management recognition of total personnel management with special emphasis on labor relations. Insure adequate line and staff support of the program.

1. Organization of Personnel Management function. The management of human resources, whether represented by labor organizations or not, requires the personnel management function, within which labor relations responsibilities are totally integrated, to have direct access to the head or principal deputy of a unit of government. Policy and program development should incorporate the total personnel management input in the formulative stages of that development.

2. Assign appropriate responsibility and authority for labor relations matters to line supervisors/managers. Sound labor relations is a line management concern. Since the line supervisor/manager so deeply affects labor relations policy and in turn is so deeply affected by that policy and by the provisions of negotiated labor agreements, management should provide that sufficient and appropriate responsibilities and authority are delegated to the line supervisor/manager in order for him to direct the workforce within the terms of a negotiated agreement and represent higher level management in a labor relations capacity.

3. Assign appropriate responsibility and authority to the personnel staff for labor relations activities. As with the duties and authorities of line supervisors and managers, the personnel staff at appropriate levels requires responsibilities and decision-making authority, as delegated by the head of a unit of government, to be that unit's primary interface with labor organizations in all aspects of labor relations. It will normally serve management's best interests to delegate to this function the authority to represent the agency in dealing with unions, in third-party proceedings, and in conjunction with line management, in preparing and conducting negotiations with labor organizations and in implementing and administering the resulting agreement.

4. Engage line management in pre-negotiation planning and in contract administration. Line management participation is essential in effective labor relations. At the supervisory level, management has the benefit of frequent, direct contact with rank and file employees which can help identify employee needs and concerns and anticipate union demands. Line managers also can identify provisions that affect efficiency and effectiveness of their division's operations. They know best which provisions will place undesirable and/or unworkable limits on the authority needed to meet their goals and missions.

5. Provide line management at all levels with labor relations staff support. The line supervisor's/manager's need for authoritative technical and policy guidance on labor relations matters of significance should be furnished by staff support aware of the supervisor's/manager's specific area of responsibility and able to interpret the official position on a particular question of policy. Each particular circumstance should dictate the appropriate pattern.

6. When appropriate, utilize external sources of labor relations skills for guidance and assistance.

   The U.S. Civil Service Commission through its Office of Labor-Management Relations and its Regional Labor Relations Officers, will furnish day-to-day technical advice and guidance to agencies in all aspects of state and municipal labor relations. The Commission will stand ready to assist departments in labor relations training through its Labor Relations Training Center and Regional Training facilities. Numerous academic institutions and experts can also offer assistance in specialized areas.

A
MANAGEMENT
LABOR RELATIONS
PHILOSOPHY

This is a mock document.

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
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WASHINGTON, D.C. 20415

RN I-6

SERVICE PHILOSOPHY OF UNION-MANAGEMENT RELATIONS

This statement is intended to provide

- the Service's perception of the dimensions of the union relationship and of the values inherent in the relationship,
- the Service's commitment to the program and its intentions for approaching the relationship,
- a guide for Service managers at all levels, and
- a conceptual background for the Policy Statement on union relations.

This statement is also intended to underscore the conviction that the dimension of union relations must be woven into the fabric of Service management so that the Service may maximize the cooperative and productive benefits of the relationship.

SERVICE COMMITMENT TO PROGRAM

Much of the union relationship – sharing the formulation of policy and practice in the personnel management area, having the actions of management in this area policed by the union, the role of third parties – seems like an intrusion on the freedom to manage, as indeed it is; an unwarranted intrusion from an out-dated point of view, a healthy and progressive development from a broader realistic view of the world around us. The ability of Service managers to adjust to this dimension of management is one key to whether the Service and the union can make the relationship constructive and to whether the Service can maintain its reputation for management excellence.

Beyond the simple imperative of complying with a state law, the Service believes in the program. It is persuaded by basic concepts of fairness and human dignity, as reflected by our form of government and by the expectations of the society of which the Service is a part, that employees should have, if they properly elect to do so, a part in determining the employment conditions by which they are bound, which directly affect their safety and well-being, performance expectations and opportunities for advancement and job fulfillment. The Service believes that such participation will contribute to the efficient accomplishment of the Service's mission.

Service management officials should be aware of the existence of unions in our society and the role they play in the resolution of problems inherent in the employer-employee relationship.

Management must also understand at the same time that the needs and interests of the two parties are in some respects adversary, that differences are therefore inevitable and that even with entire good will on both sides these differences may ripen into disputes that are seemingly irreconcilable without resort to third parties.

Management should also be prepared to press its convictions on issues as vigorously as the importance of the matter warrants while conceding to the union the legitimacy of doing likewise.

In adopting this basic posture, the Service does so in light of its perception of the attendant consequences and limitations as described herein.

EMPLOYEE FREEDOM OF CHOICE

A union derives its rights from the rights of employees, including the right to participate in the formulation of personnel policies and practices and matters affecting working conditions. Employees are assured the freedom to decide whether they will join unions and, if so, which union; and whether they wish a union to represent the bargaining unit in which they are included, and, if so, to choose among any competing unions.

MANAGEMENT NEUTRALITY

To assure employee freedom of choice, Service management will maintain strict neutrality in matters of union membership and unit elections of union representation.

Further, to assure that unions remain independent so that employee free choice is meaningful, management officials will avoid entanglement in internal union affairs, neither aiding or hindering the union in this area. Management officials will take no action which is deliberately and primarily intended to impair employee loyalty to a union.

While management officials may join unions, when they do so they exercise their choice as individuals and not as representatives of management. But, because they are members of the management team, they may not participate actively in union affairs nor may they represent the union in any dealings with Service management. These conditions are imposed in the mutual interest of management and the union, to avoid conflict of interest, and to assure integrity in the identification of management and the union as separate independent parties.

MANAGEMENT ATTITUDE VIS-A-VIS A CERTIFIED UNION

Once a union has won the right to represent employees by majority vote in a secret ballot election, management neutrality beyond the matters described in not a requirement. By contrast, at this juncture, management officials will make every reasonable effort to develop and maintain a relationship with the union characterized by cooperation, constructiveness, and cordiality, and by recognition of the principle that both the Service and the union need the support of employees for successful accomplishment of their legitimate objectives.

PUBLIC INTEREST IS PARAMOUNT

The only reason for the Service to exist is to conduct public business entrusted to it by legislation. It follows that in the performance of its mission, public interest must be the primary consideration. This principle carries several implications.

It means that Service officials are entrusted with discretion

- to define the Service's mission within the parameters of governing legislation;
- to determine its budget needs;
- to determine its organizational structure;
- to determine the size, nature and deployment of its personnel complement;
- to determine the technique of performing its work; and
- to determine its internal security practices.

Constraints on the discretion of Service officials to make these determinations emanate from sources of higher authority in specific jurisdictional areas – the Legislature, the Governors, and the State Civil Service Commission.

Employees do not have any basic right to participate in these determinations. Therefore, since the union derives its rights from basic employee rights, the employees' election of a union to represent them does not confer on the union any credentials to negotiate on these matters.

At the same time, the provision of appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change as a consequence of any of these determinations is considered to come within the scope of personnel policy and practice and is therefore a proper matter for negotiation.

Finally, the public interest must be the prime factor of consideration in all negotiations with the union.

MANAGEMENT RIGHTS

The first area of management rights includes those determinations described under the heading, "Public Interest is Paramount."

The second area. The union right to negotiation and consultation does not imply a concept of co-management. Many of the decisions enumerated below are made under systems or programs which specify requirements, conditions and criteria. Many aspects of these systems or programs come within the scope of personnel policy and practice and working conditions and are therefore negotiable. But, the day-to-day conduct of these activities in accordance with the system or program which incorporates applicable laws and regulations and provisions of any negotiated agreement is the right and responsibility of management. In this context, management officials retain the right

- to direct employees;
- to hire, promote, transfer, assign, and retain employees within the Service, and to suspend, demote, discharge or take other disciplinary action against employees;
- to relieve employees from duties because of lack of work or for other legitimate reasons;
- to maintain the efficiency of the Government operations entrusted to them; and
- to determine the methods, means, and personnel by which such operations are to be conducted.

The third area. A somewhat different kind of management right – one which flows directly from the principle that public interest is paramount – is a special reserve clause embodying the right to take whatever actions may be necessary to carry out the mission of the Service in situations of emergency. This includes the right to disregard the provisions of a negotiated agreement to whatever extent may be warranted by the nature of the emergency. Quite obviously, therefore, it is an exception which must not be invoked lightly. In fact, it will be invoked only by the Commissioner, or by the responsbile head of a subordinate echelon only when communication with the Commissioner has been severed.

PRECEDENCE OF LAWS AND REGULATIONS

Both parties – the Service and the union – are constrained by

- existing and future applicable laws;
- existing and future regulations and policies of other government bodies
- regulations of echelons within the Service and the Department higher than the echelon at which negotiation takes place, which are in effect at the time an agreement is approved;
- subsequent regulations of higher echelons which are required by law or by regulations and policies of external government bodies; and
- provisions of a controlling agreement at a higher level.

A prominent example of precedential law and regulations is the traditional commitment to merit principles in the formulation of personnel policy and practice.

Since neither party, nor both acting in concert, is vested with any authority to avoid, disregard, or modify such laws and regulations, these provisions are beyond the reach of negotiation and consultation.

LIMITATIONS ON UNION CREDENTIALS

The union derives its rights from the free election of employees in a clearly defined bargaining unit. It follows that the union's rights in negotiation and consultation are confined to employees positions, and conditions within that bargaining unit.

NEGOTIATION

Negotiation is the very heart of the union-management relationship to which all other facets, even consultation, are ancillary. It is the process by which the two parties periodically confront each other as equals, to bilaterally formulate personnel policy and practices and to agree on other matters affecting working conditions within the limitations previously described.

The right to negotiate attaches to both the Service and the union and either party may invoke the right.

The obligation to negotiate also extends to both parties and, therefore, requires either party to respond to the motion of the other party. Nevertheless, because of the practical need for reasonable stability in administration, it is not contemplated that the parties should engage in continuous negotiations. To the contrary, it is expected that negotiation will be conducted at intervals, at which time both parties will put forth all their respective proposals and, after agreement on these issues, the agreement will provide a reasonable term during which negotiation will not be reopened except as may be provided by the express terms of the agreement.

This procedure sets up consequences for both parties. During the term of the agreement and except as may be provided for in the agreement itself –

- the union may not negotiate changes in agreement provisions nor negotiate on new matters not covered by the agreement;
- management may not alter agreement provisions or implement new policies or practices or change existing policy or practices on negotiable matters;
- except that, whenever law or the regulations of other government bodies require new policies or practices or changes in agreement provisions, management will consult with the union on the implementation of such changes.

Management must approach the entire relationship in good faith which means seriously, objectively, and constructively. It should first assess every union proposal with respect to whether it is negotiable. This judgment requires complete understanding of the precise terms of the proposal. If management concludes the proposal is non-negotiable, in whole or in part, it should act firmly to preserve this principle – first by discussion with the union and ultimately, if necessary, by referral to the appropriate third party.

Even if it is management's position that the issue is non-negotiable, the underlying problem should be attended to and if effective correction is instituted, this fact may satisfy the union and obviate the need to the question of negotiability to conclusion.

If the proposal is negotiable, management's assessment must take the following facts into account:

- importance, as viewed by the union and by management
- benefits to employees, the union, and the Service
- adverse effects on efficiency
- effects on service to taxpayers
- economic costs involved.

After this assessment, management will develop its position which may be assent, compromise, counter proposal or rejection.

Without going into all the nuances of bargaining, it should be kept in mind that the essential objective of negotiation is bilateral agreement. To the extent that impasses on negotiable issues must be referred to third parties (beyond the process of mediation) this fact alone, reflects objectively a failure of the negotiation process which both parties should seek conscientiously and intensively to avoid.

In fact, therefore, the willingness to allow an issue to be removed from the arena of bargaining between the two parties and be decided by a third party should serve as a test of management's conviction both of the correctness of its position and whether it has exhausted all reasonable efforts to find a mutually agreeable resolution.

ADMINISTERING AND POLICING THE AGREEMENT

Next in importance after negotiation is the process of administering and policing the agreement to assure that the policies and practices formulated bilaterally are in fact implemented and administered in accord with the understanding and intent of both parties.

In this process, management has the primary responsibility of administering the agreement since it is entrusted with the direction of employees towards the accomplishment of the Service's mission. But promises made by management at the bargaining table can be empty unless the union can also enforce the rights it achieved through negotiation. While good faith is an important attribute, if the administration of the agreement depends wholly on this condition, the union's attainment of benefits for itself and the employees it represents become a

matter of management grace rather than union and employee right.

The union's right to enforce the agreement, therefore, is implicit in bilateralism. It requires an effective system for challenging management action and obtaining redress for management actions which violate the rights of the union or of employees as expressed in the agreement. To achieve these purposes, the system must include the following provisions:

- defintion of the alleged violation,
- access to records and/or persons which or who can establish the relevant facts, and
- objective evaluation and disposition by levels of authority above the immediate parties to the disagreement.

In the further interest of fairness, the employee or the union should have the opportunity for representation and the employee and his representative should be able to present the disagreement on official duty time.

The matter of whether the system shall include provision for arbitration is a proper subject for negotiation.

The first-line supervisor is a key figure in the administration of a union-management agreement. Since he is the principal management contact for employees he supervises, his actions and attitude will shape employees' evaluation of the Service's good faith in relations with the union. First-level supervisors, therefore, must thoroughly understand the provisions of the agreement and the context in which these provisions were agreed to.

The union will ordinarily appoint representatives (or stewards) as its primary agents for policing the agreement. They will be expected by the union to observe, assess, and report back on how the agreement is being administered and to represent employees who allege the agreement is being violated. These union representatives play an important role in the union-management relationship.

Hence, the supervisor's attitude towards the union relationship, the agreement, the union representative and the employees will be as important as his knowledge of the agreement provisions. He must reflect the Service's commitment to a constructive, cooperative relationship; view compliance with the agreement as an integral dimension of his supervisory responsibility; and make an intensive effort to establish with the employees and the union representative a mature relationship bases on fair, honest, reasonable, and open dealings with them.

He should respect the union representative's position and keep him informed, in advance of notifying employees, of developments affecting them which are not subject to negotiation or consultation, such as contemplated overtime, changes in work schedules and so forth. He needs to develop a working relationship with higher level management that will clarify which matters he will inform the immediate union representative about and which matters will be discussed at higher management and union levels.

At the same time, the supervisor must not be hampered in his primary function of securing efficient work results. He is entitled to expect from the union representative the same respect he accords him and to expect the representative to support the agreement as written and the principle of a fair day's work from each employee.

CONSULTATION

While the union's right to be consulted applies to the same subjects that are negotiable, consultation differs materially from negotiation. Whereas negotiation contemplates bilateral agreement, consultation involves making management proposals known to the union and considering union observations, objections, and alternate proposals. Ultimately, management retains the right to decide and proceed.

To maintain an effective relationship, union reactions must receive the same objective and constructive consideration that attends negotiation. It is furthermore a mark of cooperation, good faith, and courtesy that management advise the union what disposition was made of its objections and alternate proposals if they are not accepted and the reasons therefor.

EXCHANGE OF INFORMATION

The Service recognizes that the interest of employees and the union extends naturally to matters that affect employees directly and significantly but are beyond the scope of negotiability. Reasonableness dictates that suitable provisions be made to accommodate this interest.

Management officials at appropriate levels should plan to exchange such information with the union, when practical, regarding Service plans and anticipated developments. Without imparting to such exchanges the character of consultation or negotiation, management will give such consideration to union reaction as is warranted by its merit and by regard for the fact that employees look on the union as their spokesman.

OTHER RIGHTS PRIVILEGES AND COURTESIES

Flowing directly from the union's right of negotiating and policing the agreement is its right to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices or other matters affecting working conditions of employees in the unit for which the union holds recognition. Management officials are responsible for offering the union this opportunity.

Applicability of this right in connection with grievances is accommodated in the Service grievance system and will be covered in any negotiated grievance system(s).

The right does not apply to meetings confined to management personnel nor to meetings of management personnel with employees outside the bargaining unit nor to meetings of management with employees in the bargaining unit on matters beyond the scope of negotiability. Nor does the right apply to meetings with individual employees for purposes of work direction, performance counselling and so forth.

The union has no inherent right to use of official or Service facilities for its representatives, but, within the limits of applicable laws and regulations, these matters may be negotiated; and, to the extent agreement is reached, use of official time and Service facilities thereby becomes a matter of right.

Without dictating fixed Service positions on these matters, Service managers will bear the following principles in mind:

- the union should be viewed as an independent organization responsible for sustaining itself;
- the union is entitled to reasonable access to employees in the unit(s) it represents but not necessarily on official time;
- as an organization representing Service employees and conducting its external activities primarily in-house, and with whom a cooperative relationship is highly desirable, the union should be provided all reasonable courtesies;
- grievances arising from conditions on the job should be resolved on the job, that is, during official duty time;
- face-to-face dealings between management officials and union representatives which by their nature is visible to and therefore controllable by management should be conducted on official time;
- distinction should be made between facilities which involve direct or indirect costs to the Service, such as use of expendable supplies, and those which do not involve costs, such as temporarily available space.
- official time must not be used for any strictly internal union business (e.g., solicitation of membership or dues);
- it is undesirable for management to assume any responsibility for internal union business, such as would be involved in regular distribution of union material by official messenger service;
- the union enjoys 'freedom of the press' in its publications; at the same time, the Service has no obligation to permit posting on Service premises of any union material which Service managers perceive as being injurious to the interest of the Service or broader public interest.

SANCTIONS, REMEDIES, AND PROHIBITED ACTIVITIES

The system of labor-management relations provides suitable third party machinery for resolution of negotiability disputes; unfair labor practice charges, including alleged refusal to negotiate; negotiation impasses; and union and employee grievances.

Unions and employees are prohibited by law from engaging in strikes or other job actions, that is, work stoppages or slowdowns or picketing. Unions have an express responsibility to prevent and to stop all such job actions.

In the event job actions should occur, local officials should attempt to establish contact with the employees and/or union officers involved, remind them of the potential consequences of their actions, and attempt to persuade them to return to their normal operating duties. At the same time, they should provide assurance of prompt objective study of the alleged conditions which precipitated the job action.

Beyond the reminders and assurances described above, local management officials should not use either threats or guarantees in their efforts to restore normal operations. Should attempts at persuasion fail, local officials will confer with officials on how to proceed.

Management officials are prohibited from interfering with, restraining, or coercing any employee in order to prevent, or as a consequence of, participation in any proper union activity.

MANAGEMENT UNITY

Bearing in mind that the Service and the union are separate entities, managers at all levels should review their own orientation. The positions they occupy place on them the responsibility for administering and supporting Service management practices in relation to employees under their supervision. They are all a part of the management circle.

Reliance will not be placed solely on direction to achieve management unity. The Service is conscious of manager needs particularly at lower organizational levels to participate actively in the review and improvement of management practices they are charged with administering. Hence, the Service expects all managers above the first level to

- review with subordinate managers periodically the problems they are encountering in administering Service policy and practice and/or the union agreement; and
- provide feedback up the management line on problems and proposals for solution.

Managers at all levels should actively foster respect for candor and honest dissent above and below them within the management circle. The union, however, should not be privy to these management deliberations and internal communication. Managers should work vigorously within management channels to correct any perceived errors and inequities in Service management but they should not align themselves with employees or the union in any controversies with higher management levels.

The Service expects all managers to familiarize themselves with this statement of philosophy, to seek through channels any needed clarification of concepts, and to be guided by this philosophy in their management activities.

In particular, managers should

- proceed from a base of trust and respect for the union and its representatives;
- consider all differences with the union or employees seriously;
- approach all differences in a climate of mutual problem-solving;
- try to settle differences at the lowest level;
- foster a climate of cooperation; and
- recognize that differences are inevitable but appreciate the contribution towards a climate of cooperation made by reasonable and timely settlement vs. escalation.

The union has the potential for assisting management by identifying problems, pinpointing weaknesses and other-wise helping to accomplish the Service's mission in the most efficient and economical manner.

The Service depends on its managers to make this potential a reality.

A

MANAGEMENT

LABOR RELATIONS

POLICY

NOTE: This is a mock document.

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A MANAGEMENT LABOR RELATIONS POLICY

Policies of the Service

Employee participation in establishing personnel policies

The Service recognizes that the participation of its employees in the formulation and implementation of personnel policies affecting the conditions of their employment serves the interest of their own well-being and contributes to the efficient administration of the Service's business.

Public interest is paramount in conduct of Service business

At the same time the Service shall take account of the fact that in its conduct of the Service's business, in its relationships with its employees and in its relationship with unions, the public interest is paramount.

Service requires high standards of employee performance

In furtherance of the public interest, it is the continuing responsibility of the Service to require high standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency.

Principles to be observed in management relations with unions

More specifically, the Service will:

(1) reserve to Service management the right to manage, including the right to administer those provisions of any negotiated agreement(s) with which it is charged;

(2) accept the principle of bilateral – Service management and the union – formulation of personnel policy and practice and working conditions;

(3) preserve the distinction between negotiable and non-negotiable matters provided in the governing law;

(4) reserve the right to take whatever action is necessary to carry out the mission of the Service in an emergency;

(5) recognize employees' freedom of choice to join or not join unions and to select which union, if any, they wish to represent them;

(6) maintain strict neutrality in matters of union membership and unit elections of union representation;

(7) refrain from dominating or interfering with the formulation of or internal administration of any union;

(8) prohibit Service managers from engaging in any activities with unions that would involve a real or potential conflict of interest with their duties and responsibilities as managers;

Principles to be observed in management relations with unions (continued)

(9) extend full recognition to any certified union in its capacity as representative of all employees in the respective bargaining unit(s)

(10) negotiate and consult in good faith with certified unions on negotiable matters;

(11) recognize the right of the union to assure that management administers the agreement in accord with the intent of both parties;

(12) appreciate that differences may arise between management and unions even when both parties are acting in good faith;

(13) seek amicable resolution of differences between management and unions;

(14) recognize and utilize the services of third parties in accord with the intent of the state law governing labor-management relations,

(15) be aware of the interest of certified unions in non-negotiable matters directly and significantly affecting the employees in the bargaining unit(s) they represent by:

(a) exchanging information on such matters with the unions, when practical, and

(b) considering union views on such matters;

(16) view unions as self-sustaining organizations;

(17) recognize the right of unions to reasonable access to employees in the bargaining unit(s) they represent;

(18) guarantee union representatives against coercion, intimidation, harrassment, or other retaliation as the consequence of union activities;

(19) maintain constructive, productive and cordial relations with authorized union representatives;

(20) provide the training deemed necessary for all management officials who have any responsibility in connection with the Service's relationship with unions; and

(21) evaluate periodically the quality of the Service's relationship with unions in relation to the Service's approved management philosophy.

Service to seek cooperation of unions

Finally, the Service will, in keeping with the concept of bilateralism, observe the principle that the public interest is paramount, actively and conscientiously seek the cooperation of unions in minimizing the adversary aspects of the mutual relationship and maximizing the productive benefits to employees, the unions, and the Service.

MANAGEMENT APPROACHES TO INSURING COMPATIBILITY OF COLLECTIVE BARGAINING AND MERIT PRINCIPLES

Prepared by Labor Relations Training Center

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MANAGEMENT APPROACHES TO INSURING COMPATIBILITY OF COLLECTIVE BARGAINING AND MERIT PRINCIPLES

MERIT PRINCIPLES AND MERIT SYSTEMS

A meaningful consideration of management approaches to insuring compatibility of collective bargaining and merit principles must be preceded by a clear distinction between the terms "merit principle" and "civil service" or "merit system." The one is a set of standards; the other is a system designed to implement and protect those standards.

The "merit principle" is a concept of public personnel management that provides for employee recruitment, selection, promotion, training, compensation and retention on the basis of the employee's ability to perform the duties satisfactorily and without consideration of non-ability related factors.

One set of official standards for assessing the validity and viability of the merit principle in action is set forth in the Intergovernmental Personnel Act. They are:

1. Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

2. Providing equitable and adequate compensation.

3. Training employees, as needed, to assure high-quality performance.

4. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, including reassignment, and separating employees whose inadequate performance cannot be corrected.

5. Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, or religious creed.

6. Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the results of an election or a nomination for office.

Another description of merit principles was stated by the U. S. Civil Service Commission on the 90th Anniversary observance of the Pendleton Act:

1. Open competition in hiring or employment; advancement based on ability.

2. Equal opportunity, fair treatment for all employees and applicants.

3. Fair compensation.

4. Retention based on performance.

5. Training to improve performance.

6. Protection against political coercion; prohibition of partisan political activity.

Critics of public sector unions have been too quick to equate union attacks on the systems designed to implement such principles with attacks on the principles themselves. In fact, unions have frequently been strong defenders of such principles. Several prominent public sector unions, including the National Federation of Federal Employees, and the American Federation of State, County and Municipal Employees were originally formed to protect employees from patronage abuses and to promote uniform classification, hiring and promotion policies. Frequently unions serve as policemen, using grievance and civil service appeals to guarantee that managers abide by merit principles and rules which they otherwise might choose to ignore or apply selectively. And in many cases it has been unions which have been most active in pushing for improved training opportunities, clear and equitable promotion standards, and other policies designed to promote merit principles.

There are also many sorts of personnel policies which are critical to merit principles yet which have attracted little union objection. Most prominent among these are policies governing and selecting persons for initial employment.

All of this is not to imply that unions are consistent defenders of merit principles in public employment. While major public sector labor unions generally have

accepted merit principles in public policy, they have exerted pressure for the right to introduce into the public sector, **private sector practices** which may impinge upon these principles as traditionally defined. These include the union or agency shop and seniority as the determining factor in personnel actions, job classification and wages. In particular, seniority can be expected to appear more and more as an issue at the bargaining table, not because it is a traditional element in private-sector bargaining, but because many public employees believe it to be a genuinely equitable consideration for personnel actions. This equity is already widely acknowledged in non-merit areas in the public sector by such practices as assigning vacations, parking spaces and overtime on the basis of seniority. But, it is generally recognized that seniority as the sole determining factor in retention, promotion and transfer actions cannot be viewed as compatible with merit principles.

Nevertheless, acknowledging that the policies advocated by unions sometimes conflict with merit principles is considerably different from concluding that collective bargaining and merit principles are incompatible. The important question is whether the advent of collective bargaining will so affect the administration of merit systems that vital protections to merit principles will be abandoned. When selecting a position on this issue, one has three choices, each of which shares a measure of popularity among those persons with views on the subject. No consensus is apparent.

One point of view holds that collective bargaining and the merit system are in conflict and will perpetually remain so. Many exponents of this premise fail to distinguish "principles" from "system." Their approach is simplistic to an issue that is quite complex. Furthermore, they disregard the fact that in numerous public jurisdictions, accommodations between the two are operating satisfactorily and have been for a considerable time, particularly at the local level.

A second point of view concludes that the civil service system and collective bargaining will remain locked in conflict until one completely subordinates the other. The argument is made that the two cannot sustain a workable and productive relationship within a given personnel management system for any appreciable period of time. This position is based on the premise that collective bargaining is a comprehensive management system itself, rather than a vehicle for employee representation in the personnel management decision-making process. Indeed, some maintain that if merit principles are retained intact during the bargaining process, that the negotiated agreement provides a substitute for a comprehensive merit system. However, just as in the private sector, collective bargaining in public service is not a substitute for the total personnel management system essential to organizational vitality.

A third point of view is illustrated by positions taken by the Advisory Committee on Intergovernmental Relations and the National Civil Service League. Both groups argue that merit systems and collective bargaining can co-exist but that both must accept modification in purpose and procedure. Many labor relations authorities concur in the opinion that accommodations are possible and, in fact, are emerging in public sector labor-management relations across the Nation. There are four such areas of accommodation which should be noted: negotiability and the scope of bargaining; unit determination; administration of the labor-management program; and management's conduct at the bargaining table.

NEGOTIABILITY AND SCOPE OF BARGAINING

The first approach to guaranteeing the compatibility of collective bargaining and merit principles is to exclude from the scope of bargaining those topics deemed essential to the preservation of merit principles. This can be done by either cataloguing subjects which cannot be covered in negotiations, or by specifying that a collective bargaining agreement may not supersede the terms of whatever laws or regulations have been instituted to protect merit principles.

The Federal Program, under EO 11491, has incorporated both of these approaches. The Order's basic protection for merit principles is a provision stating that negotiated agreements may not supersede regulations of the U. S. Civil Service Commission, nor may agreements be read in such a way as to supersede such regulations.

There is no guarantee that Civil Service regulations will be kept to the bare minimum necessary to protect merit principles, and whatever additional regulation goes on needlessly frustrates – and weakens – the collective bargaining process. The difficulty is that there is no abstract or entirely objective way of knowing where the line between appropriate and inappropriate regulation lies. The answer will be a political one, in the sense that the success of the labor-management program depends upon mutual accomodation. Unions must accept the special restraints of public sector labor relations; but they are not likely

to do so if management abuses the system by using higher regulations, designed to protect merit principles, as reasons for refusing to deal with problems in substantive areas of personnel policy.

There is no unanimity among labor leaders or public managers, regarding this issue. Some prominent labor officials consistently demand that all aspects of employee relations are or should be negotiable. Others support merit principles as applied to recruitment and selection activities while insisting that promotion, compensation, discipline and retention matters should be subject to bilateral determination. Still others in independent unions and associations claim that there is a tendency among international affiliated unions to give "lip service" to merit systems while espousing the philosophy that selection and placement policies are negotiable. In many circumstances the proponents of collective bargaining equate "merit" with "seniority," thereby overcoming (at least in their own minds) the paradox in subscribing to both concepts simultaneously.

Public managers, while less vocal than their labor counterparts, appear to take a stance generally favoring the primacy of merit principles over collective bargaining. Merit principles are to be protected, but there is room for negotiated change in the operating civil service system. Thoughtful managers recognize that collective bargaining has an appropriate role in public administration. Statutory or administrative establishment of public sector collective bargaining must be designed to protect merit principles.

UNIT DETERMINATION

The process of determining appropriate bargaining units poses dangers for the implementation of merit principles, but it also provides managers with special opportunities for protecting merit principles. Fragmentation of bargaining units threatens to undermine the uniformity in personnel policies which has been a hallmark of traditional merit systems. While some such uniformity may be unnecessary and, indeed, undesirable, excessive fragmentation can threaten the principle of equal rights and opportunities in personnel actions for those similarly situated.

E.O. 11491 specifies that the appropriateness of bargaining units will be determined by gauging the impact which a given unit would have on the effectiveness of dealings between the parties and the efficiency of agency operations, as well as by deciding whether a "community of interest" exists among employees in the proposed bargaining unit. Not only are the first two criteria unique to the public sector, but the Assistant Secretary of Labor has also applied the third criteria in an unique way, looking to see if a proposed unit's employees have a community of interest **separate and distinct** from the interests of other employees. All three criteria, therefore, oppose excessive fragmentation of bargaining units and thereby protect merit principles. Managers should not hesitate to use such arguments to promote such a goal, and, if faced with undesirable fragmentation, should seek ways of alleviating its consequences, either through consolidation of units or through multi-unit bargaining.

> "Bargaining unit criteria vary from state to state, but are usually based upon familiar private sector standards, such as the community of interest and the wishes of the employees. Some public sector statutes recognize that in addition to the foregoing the factors of the authority of the employer to bargain and sound labor relations must also be considered in establishing appropriate bargaining units . . . ."
>
> Arvid Anderson, "The Structure of Public Sector Bargaining" – Public Workers and Public Unions – Prentice-Hall 1972

THE ROLE OF A CIVIL SERVICE SYSTEM IN A COLLECTIVE BARGAINING SETTING

There are some growing differences of opinion regarding the role of the Civil Service system in a collective bargaining setting. Many trade unions argue that civil service systems should drop their "neutral" claims and openly identify with and serve the interest of the public employer.

On the other hand, the National Governor's Conference, in its supplement to its Task Force report on State and Local Labor Relations, points out that civil service commissions which are independent of the chief executive can inhibit management as well as labor.

Other authorities recommend the separation of civil service and labor relations as two distinct entities.

Certainly the comments of Jack Stieber are prophetic:

> "The advent of collective bargaining for government workers presages significant modifications in the

merit system and civil service, as these concepts have developed during the twentieth century."

Jack Stieber, "Public Employee Unionism: Structure, Growth, Policy" – Brookings Institution, Washington, D.C. – 1973

MANAGEMENT AT THE BARGAINING TABLE

Management's approach to collective bargaining negotiations can be the single most important element in any effort to guarantee compatibility between collective bargaining and merit principles. Managers must be aware of their right to say "no" to union proposals which they feel would violate merit principles. At the same time, a purely negative approach to negotiations will be destructive of management's position. As we noted earlier, unions frequently are quite supportive of merit principles and management should seek to take advantage of such support in order to strengthen the application of merit principles to personnel programs. Managers should also use negotiations to advance their own proposals for changes in personnel policies, rather than adopting a purely passive or defensive posture which places the initiative for bargaining entirely in the hands of union negotiators. Doing so will help guarantee that collective bargaining is used as a way of identifying and resolving problems, and thus as a way of protecting and strengthening merit principles, rather than as a purely adversary process, in which principles of equity and merit are subordinated to tests of strength and power struggles.

MEET AND CONFER APPROACH VERSUS NEGOTIATIONS APPROACH

"Initially, the state acts can be divided into two categories—those that embody the 'meet and confer' approach and those that embody the 'negotiations' approach. Implicit in the 'meet and confer' approach are the assumptions that the private sector bargaining model is not applicable to the public sector because of the differences between the public and private sectors and that these differences require that the public employers retain greater managerial discretion. Thus, under the 'meet and confer' approach, as the Advisory Commission on Intergovernmental Relations noted, 'the outcome of public employer-employee discussions depends more on management's determinations than on bilateral decisions by equals.' On the other hand, the statutes that embody the 'negotiations' approach tend to treat both parties at the bargaining table as equals and contemplate that the decision as to contract terms will be bilateral. Eight states—California, Idaho (teachers), Kansas, Minnesota, Missouri, Montana (teachers), Oregon (teachers), and South Dakota—have enacted 'meet and confer' statutes. The remaining state acts, which constitute a clear majority, are negotiation-type statutes. The trend is definitely away from the 'meet and confer' approach and toward the 'negotiation' approach. In fact, the 'meet and confer' approach can and perhaps should be viewed as an interim measure between no collective bargaining and full collective bargaining."

Lee C. Shaw, "The Development of State and Federal Laws" – Public Workers and Public Unions – Prentice-Hall 1972

CONCLUSION

The original Presidential Task Force on Employee-Management Cooperation expressed its concern for preserving merit principles as it examined the impact of its recommendations:

"The Task Force wishes . . . to note its conviction that there need be no conflict between the system of employee-management relations proposed . . . and the Civil Service merit system which is and should remain the essential basis of the personnel policy of the Federal Government."

"The full range of (merit) principles and practices . . . govern the essential character of each individual's employment. Collective dealing cannot vary these principles. It must operate within their framework."

The Task Force's comments are as relevant today as they were when they were written. But there is a growing awareness among Federal managers of the need for them to adopt positive approaches toward collective bargaining if the Task Force's confidence in the compatibility of collective bargaining and merit principles is to be justified.

PROFILES OF PUBLIC SECTOR UNIONS

Prepared by Labor Relations Training Center.

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PROFILES OF PUBLIC SECTOR UNIONS

This report is a collection of "profiles" of eight unions which represent state and local employees in the public sector. Among these eight are examples of the wide variety of organizations in the public sector. AFSCME and NAGE are "industrial" unions which represent all types of employees; SEIU and LIUNA are also "industrial" unions, but they tend to represent blue-collar and service employees more often than they do white-collar and professional employees; AGE is an affiliation of local independent public employee associations; NEA, AFT, and IAFF represent only employees in a given profession, i.e. teachers and firefighters.

The organizations described here can be distinguished in other ways. NAGE and NEA are independent unions, while the others (excluding AGE) are affiliated with the AFL-CIO. Other differences relating to scope, history, structure and issue-orientation are covered in the individual profiles. These profiles are not "complete,"either in terms of the information presented or in terms of the list of organizations described, as the thrust here is to lend an appreciation of the variety of unions and associations dealing with state and local employees, rather than to provide exhaustive, detailed research in the field.

The profiles here have been drawn in large part from information supplied by newspapers, promotional materials of the unions in question, and, in some cases, visits with members of union research departments. The Government Employee Relations Report was consulted for information on recent events, as well as for statistics in some instances. Complete statistics were not always available.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES (NAGE)

Scope

NAGE is the third-largest representative of employees in the Federal sector, and claims to be the largest independent representative of state and local police officers in the nation. It claims to represent over one hundred police departments in the New England area and holds recognition for other groups of state and local employees, although there are no figures available on the extent of its penetration into other job categories.

History

NAGE did not assume its present name until 1961. Its name before that time – the Federal Employees Veteran Association – suggests the original character of the organization: an association formed after the end of World War II by returning veterans who were anxious to protect their reemployment rights. As the position of veterans became more secure, the association gradually shifted its emphasis to include employment issues of more general concern to Federal employees. It did not make any active efforts to recruit members outside its original "territory" – naval shipyards in the Boston area – until the issuance of Executive Order 10988.

NAGE has confined most of its organizing efforts to defense establishments, although it formed the Federal Aviation Science and Technology Association (FASTA) in 1968 to compete for representation in the FAA, and was able to establish a dominant position in the Commerce Department by the strength it developed among white-collar employees in the National Weather Service. NAGE's concentration on defense establishments has been both an advantage and a disadvantage. It has been able to consolidate many of its DoD gains because of its concentration on problems of particular importance to civilians in military agencies (such as contracting out and conversion of civilian jobs to military ones), and its strength among blue-collar employees in those agencies has won it a seat as the only independent union on the Prevailing Rate Advisory Panel.

On the other hand, NAGE was unable to convert the majority of its formal recognitions to exclusive recognitions when the first category was eliminated, suggesting that its penetration into other agencies lacked the depth required to win elections. It also has been hard hit by military base closings and other reductions in the DoD work force. Although its 42.6% increase in representation over the period of November 1969 – November 1971 made it the second-fastest growing union in the Federal sector in percentage terms, over the past year (November 1971 – November 1972) it experienced a slight decline in the number of Federal employees represented and it stands to lose still more as a result of the most recent series of base closings.

In the past few years, NAGE has been directing efforts toward organizing employees of state and local jurisdictions. The largest component of this drive has been directed by the International Brotherhood of Police Officers, which affiliated with NAGE after the AFL-CIO denied it a separate charter. IBPO played a central role in the effort to get the New Hampshire State Legislature to pass collective bargaining legislation covering police, and appears to have established itself as the leading representative of police officers in New England. What little evidence exists, however, suggests that NAGE has not expanded its state and local base outside of New England. NAGE's Boston headquarters remains the only major public sector union headquarters located outside of Washington, D.C. NAGE was defeated by the Service Employees International Union (SEIU) in elections conducted in late 1971 to select bargaining representatives for Pennsylvania state professional employees.

Structure

The legislative body of NAGE is its National Convention which meets every three years. (The last time it met was in September 1971). The National Convention elects the union's national officers, consisting of a National President, National Executive Director, Vice President, five National Vice Presidents and a National Treasurer. A National Executive Committee, composed of the

national officers and a National Committeeman from each of the Association's regions, selects a National Secretary. (The National Committeemen are selected under procedures established by their respective regions.) The National Executive Committee has the authority to create regions and locals within regions.

FASTA, holding jurisdiction for FAA employees, and IBPO, covering police officers, are organized as separate divisions, having rules and dues structures of their own. FASTA's $7.50 monthly dues are higher than NAGE's regular dues ($3.75 per month), but substantially less than those of its rival, the Professional Air Traffic Controllers Organization (PATCO). A National Council of Weather Service Locals provides NAGE locals in that agency with a common bargaining representative.

Issues and Tactics

NAGE has recently been active in lobbying efforts before state legislatures. Because it is smaller than several of its rivals and remains independent of the AFL-CIO, much of NAGE's distinctive representation is provided through litigation. NAGE's monthly newspaper, FEDNEWS, frequently notes the close association its President, Ken Lyons, has with President Nixon and House Majority Leader Thomas O'Neill. Although the Association did not endorse a candidate for United States President, Lyons served as a Vice-Chairman of the Democrats for Nixon Committee.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)

Scope

AFSCME is the largest public sector union in the country and the seventh largest union overall. Nearly half (47%) of its members are employees of municipal governments; 28% are state employees, 10% are employees of county governments, and 10% non-academic employees of elementary, secondary, and higher education systems. Nearly two-thirds of AFSCME's members are blue-collar employees, although the union has recently increased its efforts to gain membership and bargaining rights among white-collar groups. Twenty percent of its members are employees of hospitals.

Although AFSCME has members in nearly every state, its heaviest concentration and largest growth have been in major industrial states. Over twenty percent of its membership is in New York State (the largest single concentration being in New York City, where 100,000 public employees belong to the union), with Pennsylvania and Michigan having another twenty percent between them.

Until recently, the few AFSCME bargaining units in the Federal sector were ones connected in some way with the District of Columbia or the Panama Canal Zone. In August of 1972, however, three Federal employee locals joined AFSCME after being expelled from the American Federation of Government Employees (AFGE). AFSCME has set up a special district council for Federal employee locals, and has said that it would welcome additional affiliations.

History

AFSCME was formed in 1933 as an autonomous division of AFGE. In 1936, it was given a separate charter by the American Federation of Labor. Under the leadership of Arnold Zander, its President from its founding until 1964, AFSCME directed most of its efforts toward lobbying and strengthening state civil service systems. A Philadelphia local negotiated AFSCME's first contract in 1939, but the Philadelphia experience remained the exception until 1958, when officials of AFSCME's New York City District Council 37 secured Mayor Robert Wagner's support for an Executive Order giving employees the right to organize and negotiate agreements with the City. In 1959, Wisconsin became the first state to enact a law giving public employees such rights.

With 183,000 members in 1960, AFSCME stood in the best position to take advantage of the sorts of changes that had taken place in New York City and Wisconsin. Arnold Zander, however, resisted efforts to get the union to redirect its basic orientation from lobbying to collective bargaining. However, after President Kennedy endorsed collective bargaining for Federal employees, states began to move toward collective bargaining. Zander was defeated at the union's 1964 convention. Jerry Wurf was elected President.

Wurf initiated a series of moves decentralizing AFSCME's structure and authority, but retaining control over organizing at the national headquarters. The new leadership stepped up organizing efforts, concentrating on those states where laws already permitted unions to organize and represent public employees, but also trying to build up sufficient strength in other states in order to pressure local and state political leaders to pass such legislation. Their efforts secured AFSCME's position as the leading union among local government employees, and although they met stiffer opposition at the state government level from employee associations like the New York State Civil Service Association and the California State Employees Association, they made substantial gains at that level as well.

AFSCME's new militancy was reflected by its willingness to strike against public employers. One of its largest and most publicized strikes was conducted in the Spring of 1968 by sanitation workers in Memphis. It was while appearing in Memphis on behalf of the strikers that Dr. Martin Luther King was killed. The Memphis strike illustrates how AFSCME has relied on support from civil rights leaders in its attempts to organize and win bargaining rights for minority group employees. On the other hand, the low-paid employees which have frequently been AFSCME's chief source of support, have less resources to sustain strikes and protracted

legal battles, and thus, organizing them has frequently proven to be especially hard on the union's treasury.

Two of AFSCME's most recent and biggest successes illustrate other aspects of its organizing efforts. In 1970, Pennsylvania passed comprehensive legislation giving state and local employees the rights to organize and bargain and a limited right to strike over negotiation impasses; Hawaii enacted a somewhat similar law in 1971. AFSCME won recognition rights for the majority of state employees covered by these laws, but it did so in two different ways. In Pennsylvania, AFSCME was able to take advantage of its size and experience in organizing public employees by assembling a large team of organizers from around the country and mounting a successful organizing campaign. In the case of blue-collar employees, AFSCME confronted a coalition of other AFL-CIO unions which had their primary base in the private sector (SEIU, LIUNA, and the Operating Engineers), and the subsequent campaign was so bitter that the AFL-CIO Executive Council eventually found all of the parties guilty of using unfair tactics. AFSCME was able to win recognition rights, however, for over 70,000 public employees in just over a year. In Hawaii, by contrast, AFSCME chose to court mergers with the Hawaii United Public Workers and the Hawaiian Government Employees Association. SEIU also courted these independent organizations, but they chose AFSCME and went on to win recognition for more than 28,000 new members. AFSCME has merged with independent associations in other state and local jurisdictions, including Maryland, Rhode Island, Philadelphia, and Los Angeles. By competing on its own in some states and by merging with independent associations in others, AFSCME has been able to sustain a growth of over one thousand new members each week for the past several years.

Structure

AFSCME's biennial convention meets in even-numbered years. Its 1972 convention changed the terms of office of its International President, its International Secretary-Treasurer, and its twenty-one International Vice-Presidents from two to four years. These officers comprise the union's International Executive Board. Members of the Union's Judicial Panel are appointed by the union's President, with the consent of its Executive Board, for staggered five-year terms, and have jurisdiction over various internal union disputes. Prior to the 1972 convention, Panel members were appointed by the Executive Board itself. Joseph Ames, formerly the union's Secretary-Treasurer, was appointed the chairman of the panel in 1972, and William Lucy, a 39-year-old Black who had served as one of Wurf's assistants, was elected Secretary-Treasurer. (The union takes every opportunity to point out that Lucy holds the highest position of any Black in a major American union.)

AFSCME's more than 2,400 locals and seventy district councils exercise more authority than their counterparts in other public sector unions. Locals have the right to decide on their own whether or not to go out on strike, and 800 of the union's 920 full-time staff members operate in the field rather than out of the union's Washington headquarters. AFSCME has the largest education department of any union in the AFL-CIO, and its research department is among the largest.

AFSCME's President is a member of the AFL-CIO Executive Council, and the union is a member of the Federation's Industrial Union Department, its Maritime Trades Department, its Government Employees Council, and its Scientific, Professional and Cultural Employees Council.

AFSCME members pay average monthly dues of $5.00, $1.50 of which goes to the union's national treasury. Its newspaper, The Public Employee, is a monthly publication.

Issues and Tactics

Although spokesmen for the union report that "about two-thirds of our manpower and two-thirds of our energy goes (sic) into organizing." AFSCME has begun to pay increasing attention to political action at the national level. Its leadership is concerned that increasing numbers of state and local public employers are pleading poverty at the bargaining table, and the union has cooperated with public employer groups which have been lobbying Congress for increases in Federal financial support. AFSCME has also formed a coalition of public employee organizations to press for a national collective bargaining law, extension of Social Security coverage to public employees, (covering state and local employees) and other legislation of interest to government workers. Thus far, the International Association of Fire Fighters, the National Association of Internal Revenue Employees

and the National Education Association have joined the coalition (provoking a bitter attack from the AFL-CIO's American Federation of Teachers, arch rival of the unaffiliated NEA).

AFSCME established a political action arm (entitled Public Employees Organized to Promote Legislative Equality, or "PEOPLE") in 1968. PEOPLE conducted its first nation-wide drive for voluntary contributions in 1972, when it endorsed Edmund Muskie for the Democratic Presidential nomination, then gave strong support to George McGovern's Presidential campaign.

At the bargaining table, AFSCME negotiators have paid particular attention to the problems of their minority group constituency. The union has set up a special department to deal with issues involving career development and upward mobility, and has helped employers, many of them hospitals, develop training programs to promote such goals.

In recent years, the number and intensity of AFSCME strikes have declined. The union has actually proposed voluntary arbitration as an alternative to striking over negotiation impasses, but thus far most employers have resisted the suggestion.

SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU)

Scope

SEIU represents more public employees, and has more public employee members, than any other union with its principal base in the private sector. In 1970, it was the thirteenth largest union in the United States, and the second largest AFL-CIO representative of state and local government employees (AFSCME being the largest.) Its 120,000 total membership in California makes it the largest union in that state.

In the public sector, SEIU represents a wide variety of professional, blue-collar and uniformed employees, including social workers, practical nurses, policemen, and janitors. It is the largest representative of hospital and social work employees, and holds exclusive recognition for large numbers of non-academic school personnel and employees in the gas and public utility field. Its principal successes have been among state and local employees on the West Coast, but it has been active in large cities throughout the North as well. Recent organizing efforts have been conducted in the Southern states.

History

SEIU was chartered by the American Federation of Labor in 1921 as the "Building Service Employees International Union." Its earliest membership was concentrated among janitorial and custodial services in the Mid-Western states, and until the 1960's it was most exclusively a private sector union. Its membership more than doubled during World War II (from 55,000 to 115,000) and by 1964, had climbed to 320,000.

Nevertheless, by the early 1960's, the union's leadership, under its newly-elected President, David Sullivan, began to fear that employment and labor market conditions were eroding their base of membership.. They therefore took steps to broaden their base, paying particular attention to the public sector. They dropped the word "Building" from their union's title, moved the union's headquarters from Chicago to Washington, and entered into a frequently bitter competition with their sister AFL-CIO union, the American Federation of State, County and Municipal Employees (AFSCME).

Since SEIU had to fight from an under-dog's position in its competition with AFSCME, it has been energetic in courting mergers with independent public employee associations, a tactic it has employed with particular success in California and the New England states. In early 1972, after the AFL-CIO had denied a charter to the International Brotherhood of Police Officers, SEIU established a separate division, with a high degree of autonomy, entitled the National Union of Police Officers.

David Sullivan resigned as President of SEIU in the summer of 1971, and was succeeded by George Hardy, son of a formed SEIU vice-president and a California leader of SEIU. Hardy also assumed Sullivan's seat on the AFL-CIO Executive Council.

Hardy has called for the union to devote even more attention to the public sector. He secured a fifty cent monthly dues increase from the union's 1972 convention (raising national dues from 80¢ to $1.30), and got the convention to ear-mark one-third of the increase to finance a million-dollar organizing campaign designed to double SEIU's membership over the next five years. Hardy has also directed the establishment of a full-time lobbying and political education office and has established the union's first national strike fund.

Structure

SEIU's convention meets every four years, in Presidential election years. Its 1972 convention restructured the union's International Executive Board, enlarging it from fourteen to 35 members, in an effort to give locals a greater voice at the national level. The Board consists of the International President, International Secretary-Treasurer, nine Vice-Presidents, and 24 Executive Board Members. All officers are elected at-large by the convention for four-year terms.

SEIU locals have more autonomy than do those of other public employee unions, a factor which organizers have stressed in attempting to convince independent associations to affiliate with SEIU.

SEIU's field staff has recently been increased in an effort to provide greater service to locals.

Issues and Tactics

Although somewhat less militant than its sometimes-rival AFSCME, and more of a "business union," SEIU has shown itself willing to use racial and other social issues in its organizing and political action campaigns, particularly in the public sector during the last four years. Its national leaders and conventions have taken strong stands on minority employment issues, and have called on employers to give "special consideration" to minority group members in their employment programs. In addition, SEIU has called for repeal of the Hatch Act governing political activity on the part of Federal employees, for bringing public employees under the provisions of the private-sector National Labor Relations Act, and for recently enacted special legislation giving collective bargaining rights to employees of non-profit hospitals. SEIU gave Senator George McGovern a strong endorsement during 1972's Presidential campaign, and President George Hardy was recently elected an at-large member of the Democratic National Committee.

SEIU has repeatedly called for the complete legalization of public employee strikes. Many of its state and local government affiliates have struck their employers in spite of the legal ban on such actions, but thus far none of its Federal employee locals have resorted to such tactics. No local of SEIU is permitted to strike without the approval of the union's International President. The establishment of a national strike fund probably indicates that SEIU-sponsored strikes will be more frequent in the future, but at the same time, more tightly controlled by the national leadership.

Although neither "issues" nor "tactics" in any standard sense, two of the most important elements in SEIU's program, important because of the amount of funds devoted to them and because of the amount of stress SEIU's organizing literature places on them, are SEIU's death gratuity program and its scholarship program for the children of members. The death gratuity program contributes amounts ranging from $100 to $500 to the families of deceased members and the scholarship program each year awards ten $2,000 4-year scholarships. Although other unions conduct similar or related programs, the twenty percent of SEIU's annual budget devoted to death gratuities suggests how important such programs can be for a union which is seeking to organize many relatively low-paid and low-skilled employees.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA (LIUNA)

Scope

As its name suggests, LIUNA's membership and representation are concentrated among relatively low-skilled, blue-collar workers. One-third of its members in the public sector, however, are either white-collar or service employees. LIUNA's traditional base has been in the private sector construction industry; and besides conducting organizing drives among public employees, it has recently increased its organizing within the building construction, highway and tunnel construction, and industrial construction industries. Its recruiting efforts among public employees have focused on medium-sized cities with little or no prior public sector union activity.

LIUNA is a member of the Metal Trades Department of the AFL-CIO, and several of its local unions are affiliated with exclusively-recognized Metal Trades Councils. Roughly 600 of the 5,000 Charleston Naval Shipyard employees represented by the Metal Trades Council are LIUNA members, but statistics on LIUNA participation and membership on other Councils are not available.

History

LIUNA was chartered by the American Federation of Labor in 1903 as the "International Hod Carriers and Building Laborers Union of America", the last of the AFL building construction unions to be formed. Although it conducted no major organizing among public sector employees until the 1960's, LIUNA chartered a handful of city employee's locals in public works, water and sewer departments as early as the First World War. The Laborers expanded its jurisdiction and changed its name several times over the decades following its formation. It merged on several occasions with construction unions in specialized fields, such as subway construction and road paving. Over most of this period, LIUNA was led by Joseph V. Moreschi, who served as its President from the mid-1920's until 1968.

In 1962 construction laborers still acounted for 91% of LIUNA's membership. Its membership, however, was decreasing, falling from 477,000 in 1958 to 421,000 in 1963, largely as a result of jobs being eliminated by mechanization. As a consequence, its leaders began to look for new areas for organizing, and the public sector was one of their primary targets. They gave the union its present name in 1965, organized a Public Service Division in 1967, and actively courted smaller organizations which would want to merge with LIUNA. In 1968, the Post Office Mail Handler Union, representing 46,000 postal employees, merged with LIUNA. Peter Fosco, LIUNA's former Secretary-Treasurer, was elected its President in the same year.

LIUNA's continuing efforts to organize in the public sector have brought it in competition with the American Federation of State, County and Municipal Employees (AFSCME). Although the Laborers joined forces with the Operating Engineers (another AFL-CIO union) to win joint bargaining rights for highway workers in Ohio, the two (together with SEIU) were beaten by AFSCME in early 1971 in a bitterly-fought contest for a large group of blue-collar workers in Pennsylvania, most of them skilled and semiskilled employees of the state highway department. The election campaign was so brutal that the AFL-CIO subsequently found all the parties guilty of violating the Federation's regulation prohibiting affiliated unions from attempting to discredit each other publicly. LIUNA has also been involved in jurisdictional fights with AFSCME in Baltimore, Providence, and other cities.

In recent years, LIUNA has been actively organizing in Southern states, with its most notable successes coming in 1972 in Birmingham and Montgomery, Alabama. It won bargaining rights and employee benefits in both cities, after having conducted a successful ten-day strike in Montgomery and threatening to do the same in Birmingham. LIUNA has conducted other campaigns in Virginia, West Virginia, Florida, Arkansas, Texas, Tennessee, and Georgia, paying particular attention to highway departments and non-academic employees of state universities. With an estimated forty percent of LIUNA's membership being either black or Spanish-surnamed, it has received support for its organizing

efforts from the Southern Christian Leadership Conference and other local civil rights organizations, particularly in its Birmingham drive.

By the end of the 1960's, the proportion of LIUNA's membership in the construction industry had dropped to 73%, and the number of its members in the public sector had risen (from 7500 in 1960) to an estimated 90,000. In 1970 it stood as the eighth largest union in the country.

Structure

In keeping with LIUNA's craft and construction-industry orientation, its structure is relatively more centralized than those of other unions operating in the public sector. Its convention meets every five years, the most recent in September 1971, and its officers are elected by each convention. Its General Executive Board consists of a General President, a General Secretary-Treasurer, and eight at-large Vice-Presidents. The Board has the authority to amend the union's constitution, and the constitution itself provides for uniform constitutions for all locals and district councils. The General President has the authority to impose trusteeships on locals, although only the General Executive Board may actually revoke a local's charter. The union has twelve regions and three Canadian sub-regions.

The scope of LIUNA's membership and representation is illustrated by the number of AFL-CIO departments it holds membership in: Building Trades, Maritime Trades, Metal Trades, Industrial Union Department, and the Government Employee Council. Its General President is a member of the AFL-CIO Executive Council.

LIUNA's dues are higher than those of most public sector unions (about $5 a month). In addition to it general newspaper, The Laborer, LIUNA publishes The Government Employee, a monthly publication initiated in 1967.

James LaPenta, former deputy assistant postmaster general, heads the union's Federal-Public Service Employees Division. Henry T. Wilson, former general counsel for AFSCME, is the Division's counsel and legislative director.

Issues and Tactics

Despite its traditional identification with the more conservative unions in the building trades, LIUNA's recent organizing drives have earned it a reputation for agressiveness and militancy. Although one of its national spokesmen reports that "We've had no reluctance to strike in the municipal field", most of its public sector strikes have involved recognition and bargaining rights in states, particularly in the South, which have few or no legal protections for public sector unions.

The support that LIUNA has secured from civil rights organizations in its Southern organizing campaigns has reinforced its reputation for militancy. LIUNA initiated legal action charging the City of Montgomery, Alabama with racial discrimination in public employment – the first public sector discrimination case to be brought under the Civil Rights Act of 1972. As the largest union in Arizona, LIUNA has given substantial support to Cesar Chavez's United Farm Workers Organizing Committee in the state.

LIUNA's legislative program calls for extending National Labor Relations Act coverage to state and local government employees.

More recently, LIUNA initiated prepaid legal services for its members. This fringe benefit, financed by employer contributions, may become a forerunner of many such programs by other public sector unions.

AMERICAN FEDERATION OF TEACHERS (AFT)

Scope

AFT is the smaller representative of teachers at state and local levels. Its greatest strength is in the major cities, although it is pushing for membership in the South and Midwest.

AFT has a higher percentage of males than females in its membership, and the teachers are largely at the high school and junior high levels. Only 17.6% of the locals permit principals to join, and only 19.5% allow assistant principals.

History

AFT was formed in 1916, and from the very onset concentrated its efforts on conditions of employment. Much of its earliest membership was from the Socialist Party; Communists controlled a few large locals in the 1930's, a period which also saw the AFT's membership grow from seven to thirty-two thousand in number. With the Nazi-Soviet Non-aggression pact, however, the membership became disillusioned with the Communist Party, and a non-Communist, George Counts, was elected the union's President. In the post-War years, AFT pushed for collective bargaining, and fought loyalty oath requirements in the courts. In the 1950's, AFT supported the civil rights movement, expelling local affiliates for not following a union directive to de-segregate.

More recently, the New York local, in 1962, engaged in a s... which resulted in the first comprehensive collective bargaining agreement for teachers. Over 20,000 teachers went on strike, closing hundreds of schools. The strike and resulting agreement covered both "professional" and "traditional trade union" issues such as salaries, changes in the daily and school year schedules, maximum class sizes and a grievance procedure.

At present, a big issue confronting AFT is that of merger with NEA. The merger of the New York State chapters of AFT and NEA (UFT and NYSTA) was the first step toward total merger of the two national unions. In 1972, AFT authorized further mergers with NEA in Portland, Baltimore, Kenosha (Wisc.) and Springfield (Mass.).

Structure

The legislative body of AFT is its National Convention, which meets each year. Membership is in the locals, with a per capita tax to the national and state organizations. Payment to the national is $1.75 – up $.25 in 1972. Tension exists between larger and smaller locals; an amendment designed to give smaller locals more weight in electing Vice-Presidents was defeated. In 1970, the organizing staff was restructured into five regions for better service to smaller locals.

Issues and Tactics

Overall, AFT's emphasis is more on the local level than on the state level. At this level, AFT is pushing for "classroom teachers only" units. It is also insistent on bargaining about teacher evaluation and curriculum.

Research efforts have also been expanded. AFT established a professional journal, Changing Educatior and an Effective Schools Plan (including recommendations for smaller class size, school counselors, teachers in specialized problem areas, and so forth). AFT has also encouraged innovations to meet the special problems of ghetto schools.

AFT has adopted strong pro-bussing, women's rights, and anti-Vietnam resolutions. It also endorsed George McGovern's presidential candidacy jointly with NEA.

AFT opposes a national public employee's bargaining law and especially, does not want it to include a no-strike provision. AFT has opposed joining CAPE (Coalition of American Public Employees), a legislative coalition of public employee unions

primarily involved in lobbying for a national collective bargaining law for public employees.

In 1972, AFT-sponsored strikes in Philadelphia and Washington, D.C. were the two largest teacher strikes in the country, although total strikes by AFT numbered only five. AFT also struck jointly with NEA six times during that year.

AFT leaders appear to be backing away from their earlier strong use of strikes. Albert Shanker, the new President (formerly co-president of the New York State Union of Teachers) has stated that short strikes are losing their effectiveness, and has noted the public dissatisfaction with striking. Shanker also opposes an agency shop created by statute; he feels that agency shop provisions should be negotiated by the parties.

ASSEMBLY OF GOVERNMENT EMPLOYEES (AGE)

Scope

AGE is a national federation of 47 state and local independent public employee associations operating presently in 33 states. It claims membership of more than 700,000 state, county, municipal, special district and school district classified employees.

History

AGE is new. It was founded in 1952 from a group of independent employee associations. The story of the 20 years of its existence is not yet available as Sam Hanson, one of its Founders, is presently compiling all available materials in order to write a history of the Assembly.

Structure

AGE's legislative body is the General Assembly, which meets annually. Its officers are the President, First Vice-President, Second Vice-President and Secretary, elected by the General Assembly; the Treasurer, a non-voting officer appointed by the President; and the four Regional Presidents, elected by members of their regions.

The administrative body of AGE is the Board of Directors. The members of the Board include the Officers, the immediate Past President, and the four Regional Presidents.

Of the Regions, three are geographical and one is occupational. The three geographic regions are Western AGE (WAGE), Central AGE (CAGE), and Eastern AGE (EAGE). The occupational region is the American Association of Classified School Employees, who recently merged with AGE.

Dues were recently increased from $.10 to $.20 per year. Associations need only pay dues for up to 70,000 members.

AGE has three informational papers. *Cover Age* is the paper providing information on Assembly activities and state and local events. The *Washington Witness* informs Assembly members of pertinent events on the national scene. These newspapers are supplemented by *Append Age*, a sporadically-appearing paper of news releases.

AGE has also prepared several research reports on such topics as Fringe Benefits, the Merit System, and Civil Rights Law.

Issues and Tactics

AGE considers itself a lobbying organization, the central emphasis of which is protection and furtherance of the merit system. It is also a strong protector of AGE state and local prerogative. AGE opposed the proposed National Public Employee Relations Act and has introduced its own National Public Employee Merit System and Representation Act. AGE wants to retain local personnel administration control and only place minimum national standards on employer-employee relations for the limited purpose of qualification for federal grant-in-aid programs.

AGE representatives have been put on committees dealing with public sector labor relations and have testified in Congressional hearings on AGE's behalf.

AGE emphasized continuing improvement of independent public employee organizations through seminars to educate affiliates in the principles, practices and trends in public personnel employment. It encourages organizational stability through member benefits such as low-cost group insurance, travel and investment programs, including its own mutual fund, AGE Fund Inc.

Annually, at AGE General Assembly, affiliate delegates mandate policy and position on a variety of subjects concerned with federal legislation. Those policies and positions dictate support or opposition to pending bills. Some of these are: Hatch Act, Fair Labor Standards Amendments, No-Fault Auto Insurance, Public Service and the Disadvantaged, Contracting Out, States' Rights to Set Salaries, Impoundment of Funds, Tax Deductibility of Medical Expenses, etc.

AGE has one bill, which supports states' rights to innovate diversified local employer-employee relations within merit principle guidelines to qualify for federal funds. AGE and its affiliates claim they have helped to keep the union bills in committee and work on getting their own legislation passed to permit states to develop regulations according to local conditions within merit principles.

NATIONAL EDUCATION ASSOCIATION (NEA)

Scope

NEA is the largest representative of teachers and other school personnel, with its overwhelming strength being outside the cities. It recruits among all certified personnel, and represents over 50% of the teachers. In 12.4% of the locals, membership is limited to classroom teachers, while 75% are open to superintendents.

There are at present about thirty professional special interest groups affiliated with NEA at the national level. Seven other such groups, including the American Association of School Administrators, the National Association of Elementary School Principals, and the National Association of Secondary School Principals, have disaffiliated.

History

NEA was founded in 1857. It was slow to gain membership, achieving 10,000 members for the first time in 1918. From the very beginning NEA had a heavy professional orientation. It supported the founding of normal schools. In 1946, NEA established the National Commission on Teacher Education and Professional Standards.

At the meeting of the 1960 Representative Assembly, NEA rejected the idea that representative negotiations could be compatible with the ethics and dignity of the teaching profession. In 1961, the Assembly approved representation for teachers without referring to negotiations. During this period, NEA pushed for legislation and pursued a policy of "sanctions" against employers not complying with NEA requests. These "sanctions" included censure of the employer, notification to placement services of such censure and warning to membership that violation of an NEA position would be a violation of the Code of Ethics.

As of 1964, NEA still opposed striking. In 1966, after lifting its prohibition of strikes the year before, NEA shifted to mere discouragement of strikes as a method of dispute settlement, and offered all services under NEA control to help resolve disputes by other means. By 1967, NEA had reversed its position and was denouncing strikebreakers.

From 1961-5, NEA won seventeen out of thirty-five representation elections, though losing the larger ones in Detroit, Cleveland, New York, Milwaukee, and Philadelphia to AFT unions. In response to AFT challenges in the Neward, New Haven, and New Rochelle elections, NEA emphasized collective bargaining and won.

In 1972, a proposal for merger with AFT which required AFL-CIO affiliation was rejected. Affiliations with AFT units already in existence were maintained.

In 1973 and 1974 the tenure and authority of the President was increased.

Structure

The legislative body of the NEA is the Representative Assembly, which meets annually. The Executive Officers include the President, the Vice-President, President-Elect, and the Immediate Past President, all of whom serve one-year terms. The Treasurer serves a three-year term. The Executive Secretary, who is head of NEA's staff, serves a four-year term.

There is, as well, a Board of Directors, which is comprised of one member from each state plus one additional state representative for each 200,000 NEA members within a state. Each Director serves for one three-year term.

Finally, there exists an Executive Committee, which is responsible for the overall management of NEA business. The Executive Committee selects the Executive Secretary. The Committee has ten members: The President, the Vice–President, the Immediate Past President, two persons from the

Board of Directors and four persons from the Representative Assembly. At least one of the Board members and two of the Representative Assembly members must be classroom teachers. The Board and Representative Assembly Committee members serve two year terms and no office may be held for more than three years.

Membership in NEA had been direct – one could be a member of the national, state, local, or all three. Affiliation between the three organizations had been loose. For some time, however, NEA has been pushing a unified membership system, encouraging states to make state membership a requirement of local membership. Forty-seven states have adopted such unification requirements since 1960.

Issues and Tactics

NEA has traditionally conceived of itself as a professional association. In addition to its newspaper, the NEA Reporter, it publishes a journal entitled Today's Education. NEA also puts out a catalogue listing publications and audiovisual materials on every conceivable topic of interest to teachers.

In accord with its emphasis on teaching as a profession, NEA's method of dealing with employers has been through the use of "sanctions." More recently NEA has approved the use of strikes, and in the fall of 1972, fifty-one strikes were conducted by NEA locals.

Due to its strong state-level organizations, NEA has been able to get state statutes on the books which support a separate bargaining law for teachers and which favor broad scope bargaining units. In 1969, NEA called for a Professional Negotiation Act for Public Education – a separate act for teachers which included the formation of a commission to handle unit determination and elections and appoint mediators and arbitrators. By 1971, however, NEA had joined CAPE (Coalition of American Public Employees) and was calling for a national collective bargaining law comparable in purpose and intent to the National Labor Relations Act in the private sector, determining such an act to be NEA's highest non-fiscal legislative priority.

The 1974 NEA convention passed a resolution formalizing its relationship with CAPE, thus paving the way for a national public employee federation, similar to the AFL-CIO in the private sector.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS (IAFF)

Scope

IAFF is a labor organization made up exclusively of people working in the fire service. Within that limitation, however, all levels of employees, from clerical or dispatcher to Fire Chief, are eligible to join and to be represented by the union.

IAFF is made up of approximately 1700 locals in the United States and Canada. There are, as well, 40 state and 9 provincial organizations.

History

The first continuous firefighters local was found in Philadelphia in 1903. By 1917 there were sixty-six firefighters locals in existence, which were recognized by the American Federation of Labor as the International Association of Firefighters in 1918.

The Association met fierce opposition from cities. In 1919, the Boston police strike moved Congress to enact a bill prohibiting striking by policemen in the District of Columbia. Public identification of firefighters with policemen as protectors of lives and property led to passage of an identical no-strike bill for firefighters. During this period, fifty locals resigned from the IAFF.

IAFF regained membership from 1932-37, and at present claims 162,000 members in the United States and Canada.

Although IAFF has continually disapproved of the use of strikes, its history shows repeated strikes until the present economic controls which have been imposed by President Nixon. However, none of the strikes previous to 1937 (data was not available to post-1937 strikes) resulted in significant loss to property or lives, as striking firefighters made provisions to stand by in case of emergency. Besides continued efforts for increased wages and fringe benefits (one major struggle was to remove the threat of encroachment by Social Security on the firefighters pension system, which it finally won on the floor of Congress), IAFF has been and continues to be involved in many charitable activities such as the Muscular Dystrophy Campaign.

Structure

IAFF's legislative body is the biannual convention. It is this convention which chooses the union's officers, who are up for election at each convention.

The officers include a President, sixteen District Vice-Presidents and a Secretary-Treasurer. The District Vice-Presidents represent three to four state areas. Three of the representatives are chosen from the Canadian provinces (one from each Canadian district) and one of the Vice-Presidents represents Federal employees.

Issues and Tactics

IAFF is active on every front: striking and other forms of work stoppages, lobbying, and research and education. Under President Nixon's wage-price controls, there were no strikes by IAFF locals. Before that time, however, there were approximately 20 strikes in the years 1969-70, as well as numerous work stoppages.

The method of dispute resolution which is favored by IAFF is final and binding arbitration, although IAFF will not discontinue use of its right to strike where it exists in the absence of enactments providing for binding arbitration. IAFF belonged to CAPE (Coalition of American Public Employees) and pulled out when the AFL-CIO set up a Public Employee Department in 1974.

Current items over which IAFF is lobbying in state legislatures include enactment of the Occupational Health and Safety Act, compensation for spouses and children of firefighters injured or killed in the line of duty and early retirement benefits. Also, fifteen states have now adopted minimum standards and education for firefighters as a result of IAFF lobbying in that area.

OVERVIEW OF THE HISTORY OF THE AMERICAN LABOR MOVEMENT

PREPARED BY
LABOR RELATIONS TRAINING CENTER

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BUREAU OF TRAINING
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OVERVIEW OF THE HISTORY OF THE

AMERICAN LABOR MOVEMENT

A discussion of the highlights of American labor history must begin with events prior to the American Revolution. The earliest record of what may be considered a labor disturbance goes back to 1636 when a group of fishermen off the coast of Maine were reported to have "fallen into a mutiny" when their wages were withheld. Forty years later, the licensed cartmen of New York, who had been directed to remove dirt from the street for three pence, not only protested such a low rate of pay but also "combined to refuse full compliance." The first "strike" in America is often said to have taken place in 1741 when bakers in New York City combined "not to bake bread but on certain terms." The details of this action are unclear, however, and some authorities have argued that this was not so much a labor strike as a protest against municipal regulation of wages.

An increasing number of protests by workers were stimulated by the inflation which accompanied the Revolutionary War. The first genuine labor strike occurred in 1786 when the Philadelphia printers "turned out" for a minimum wage of six dollars a week. In 1791, the first known strike in the building trades took place in Philadelphia when the journeymen carpenters struck against the master carpenters for a ten hour day and overtime pay.

Labor activity during this early period did not involve any great number of workingmen and was almost entirely local in character. Nevertheless, many of the practices now associated with trade unions developed at this time: tenuous contacts sprang up between organizations in different cities; the first wage scale was drawn up by the New York Printers in 1800; the first "sympathy" strike occurred in 1799 when the Philadelphia Bootmakers struck for higher wages and the shoemakers "turned out" to support them; the first general strike came in 1809 when the New York Cordwainers (shoemakers) declared a strike against all master cordwainers; the New York Shoemakers established the first permanent strike fund in 1805; and some early unions established a form of "closed shop" by refusing to work alongside nonmembers. A rudimentary form of collective bargaining emerged when journeymen shoemakers first agreed among themselves on the price of their goods and selected journeymen's associations to discuss their demands with masters' organizations.

The genesis of collective bargaining was brought to a halt by a series of court decisions in the early 1800's. These cases originated when master cordwainers took action to counter the growing strength of the journeymen's association by invoking the common law against criminal conspiracy. The most significant of these cases, **Commonwealth V. Pullis**, took place in the Philadelphia Mayor's Court when George Pullis and seven other shoemakers (1) struck for higher rates; (2) sought to keep other shoemakers from working at the old rate; and (3) agreed to blackball both economically and socially those workers who failed to join the organization. In his instructions to the jury, the Judge advised that a "combination of workmen to raise their wages may be considered in a twofold point of view: one is to benefit themselves, and the other is to injure those who do not join their society. The rule of law condemns both." Thus instructed, the jury found the journeymen "guilty of a combination to raise wages." Out of the Philadelphia cordwainer case evolved a legal doctrine holding that workers acting in concert to raise wages were involved in a criminal conspiracy under the common law. The doctrine endured until 1842 and served as an effective check on early unionism.

Still, the working people of the United States continued to press their demands. In 1825, the United Tailoresses of New York, a women's trade union organization, was formed. The National Trade Union was formed in New York in 1834 and marked the first attempt towards a national labor federation in the United States. The first national labor union of a specific craft, the National Cooperative of Cordwainers, was organized in New York City in 1836. In 1835, public employees came into the picture when Navy Yard workers in Washington, D.C. struck for shorter hours and general redress of grievances. Workers at the Philadelphia Navy Yard struck for several weeks in 1836 and were instrumental in obtaining a ten hour day at all places where workers were organized (Pennsylvania, New York and Maryland).

The conspiracy doctrine was modified by the 1842 decision of **Commonwealth v. Hunt** (Supreme Judicial Court of Massachusetts). In the opinion of the Court, "... a conspiracy must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful means." The Court noted that the power of a labor organization could be used for both honorable and pernicious purposes, and the doctrine that the actions of a labor combination were illegal per se was explicitly rejected. This modification of the conspiracy doctrine was gradually adopted by other courts throughout the country. Of special significance, though, in this case, and the earlier cordwainer cases, is the fact that precedent had been established for employers to rely on the courts to restrain unions.

During the 1850's and 1860's there was little effort to promote a national labor movement. Local unions, however, continued to concentrate on maintenance of apprenticeship rules, the closed shop, higher wages, and shorter work hours. This period did witness the first real attempts to form national trade unions. In 1852 the National Typographical Union was organized, and in 1859 William H. Sylvis formed the National Molders' Union. Both these organizations endure to the present time. Sylvis was also instrumental in forming in 1866 the short lived National Labor Union, a national organization of labor composed of local and national unions, trades, assemblies, skilled and unskilled workers, women and farmers' organizations, Negro groups, and miscellaneous reform movements. The purpose of the National Labor Union was to create a unity within the ranks of labor as a whole, rather than within a specific craft or trade. During these years public employees were also active and in 1862 employees of the Government Printing Office struck for several weeks for the eight hour day.

Against the somber background and hard times of the depression of the 1870's workers rose to protest violently what they considered their ruthless exploitation by employers. Demonstrations were held throughout the country, often requiring the forceful intervention of the police. Strikes among miners led to bloodshed and killings. In 1877 a spontaneous uprising by railway workers resulting in such widespread rioting that the country seemed to be facing a general labor insurrection.

In the wake of these labor disturbances, violence flared up in the coal fields of Pennsylvania, and into this troubled situation came another confusing and perplexing element: the Molly Maguires. The Molly Maguires was a terrorist offshoot of the Ancient Order of Hibernians which terrorized the coal fields and prevented those miners who wanted to work from doing so. Members of the "Mollies" intimidated the coal operators, threatened foremen and superintendents, and engaged in sabotage, assassination, and murder.

To counter the violence of the Mollies, the coal operators called in Allan Pinkerton, a Secret Service Agent who had gained acclaim for his spying against the Confederacy during the Civil War. Pinkerton sent James McParlan into the coal fields to gather what information he could about the Mollies. McParlan ingratiated himself with the leaders of the Mollies and eventually became Secretary of his district organization. (This possibly gives McParlan the dubious distinction of being the first labor spy in history. In 1875, a number of arrests were made. Largely on the unsubstantiated testimony of McParlan, fourteen Mollies were imprisoned and ten were hanged. The secret order was destroyed, and the leaderless miners began to slowly gravitate to the Knights of Labor. The Noble and Holy Order of the Knights of Labor was organized in Philadelphia in 1869 by a handful of tailors. The Order quickly drew attention to itself because of its elaborate system of ritual, secret handshakes, and passwords. The shroud of secrecy, justified at first as a necessary means for preventing persecution by employers, was finally dropped in 1878.

In 1879, membership in the Knights of Labor was only 9,287. But after 1881 the Order grew rapidly and steadily until it could boast in 1885 a membership of 111,395. Then between the years 1885 and 1887, membership surged to 729,677. There were several reasons for this phenomenal growth: the Order dropped its veil of secrecy; victory in several important strikes; the hospitality afforded by the Knights to unskilled workers; and the haven it offered to incipient industrial unions.

In its make-up the Knights of Labor was not simply a trade union, but was, in fact, an all-inclusive union. It was a single general workers' union of all trades and callings, embracing skilled and unskilled workers alike. In contrast to many of the craft unions, the Knights of Labor opened its doors to both black and white workers. To the workers of America, the Knights provided an alternative to the familiar pattern of national trade unionism.

However, the remarkable success of the Knights was shortlived. By 1890, membership was down to 100,000. Before the turn of the century, the Noble and Holy

Order was all but dead. Contributing to its demise were the revival of craft unions and agrarian elements, the failure of several strikes led by Knights, and bungling leadership.

In spite of its brief success, the Knights of Labor contributed much to the American labor movement. It created a solidarity among American workers that had previously been nearly non-existent. It offered a challenge to the rising power of industry by demonstrating the strength inherent to organized labor. And these developments were instrumental in the founding of the American Federation of Labor.

The AFL emerged in December, 1886 from an act of desperation and a gesture of defiance on the part of a handful of trade unionists who feared the growing might of the Knights. During its formative years, the AFL pursued a "pure and simple" unionism, concentrating upon immediate goals such as wages, shorter hours, and improved working conditions rather than upon ultimate goals such as major social reform.

The AFL contrasted sharply with the Knights of Labor. Whereas the Knights was a true federation of local and district assemblies, the AFL became a loose confederation of powerful and autonomous national unions. It could coordinate, advise, help and, at times, exhort the national unions, but it could not force the nationals to do anything. More than anything else, the AFL supplemented the power of the nationals.

During the early years of the AFL, three significant incidents occurred which stand as landmarks in the history of labor. The first was the Chicago Haymarket riot of 1886 which was precipitated by a strike of 40,000 workers for the 8 hour day. In the heat of events about 3,000 people gathered for a peaceful meeting in Haymarket Square. The meeting went as planned and, in fact, the Mayor called the local precinct to report everything quiet before he left the scene. Shortly after the Mayor left, a police inspector marched a detachment of 180 men into the square and ordered the crowd to disperse. Then, within minutes a bomb exploded, wounding 66 policemen, seven of whom died later. The police reacted by firing wildly into the crowd, killing seven and wounding 200. The identity of the person(s) who planted the bomb remains unknown, but a number of Chicago radicals---anarchists and socialists---were arrested. Without a shred of evidence linking these men to the bomb, seven were sentenced to be hanged and eight were sentenced to fifteen years' imprisonment. The primary results of this tragic affair were the alienation of the general public from the goals of the labor movement and the postponement for a few years of the push for the eight hour day.

The second significant incident was the 1892 steel strike at Homestead, Pennsylvania. The central issue in this dispute was the unilateral announcement by Carnegie Steel of cuts in the wage scale of 18 to 26 percent.

In response to demonstrations by the workers, management of the company shut down the Homestead plants. Then the company made arrangements with the Pinkerton Agency for 300 armed men to help crush the union. As the agents were being towed up the Monongahela River towards Homestead, they exchanged shots with the workers. Three agents and seven workers were killed. Six days later the Governor of Pennsylvania sent in state militia to assume control of the town. Steel workers in Pittsburgh then went out on a sympathy strike with the Homestead workers.

Later in the fall, twenty-seven of the Homestead strikers were indicated for treason against the state of Pennsylvania. Eventually the courts vindicated these men, but their cause was lost. With the union treasury depleted the ban on working for Carnegie Steel was finally lifted after five months. The power of the union in the steel industry was smashed.

The third major incident was the Pullman strike of June, 1894. Employees of the Pullman Palace Car Company struck in protest against a 25 to 40 percent wage cut and intolerable living conditions in their company-dominated town. The workers were members of the American Railway Union, an industrial union organized by Eugene V. Debbs. When Debbs ordered a boycott against all trains with Pullman cars, the twenty railroads were tied up.

Eventually the federal government entered the picture on grounds that the strike was interfering with interstate commerce and transportation of the mails. Troops were called in, Debbs was arrested, and court injunctions were used to restrain the strikers. Thus facing the combined opposition of the employer and the government, the strike, along with the American Railway Union, collapsed.

Of particular interest in the Pullman strike was the ironic fact that the injunction was issued under the Sherman Anti-Trust Act, a law passed in 1890 for the expressed purpose of curbing large corporations such

as Pullman. The Supreme Court sustained the injunction and, in effect, the business community had again found an ally in the courts. Much of labor's energy was subsequently devoted to fighting a series of legal battles before judges who were inclined to sympathize more with property rights than with people rights.

During the early decades of the 20th century the fortunes of labor, like the tide, continued to rise and fall:

> The International Ladies' Garment Workers Union (AFL) was organized in 1900. The Amalgamated Association of Iron, Steel, and Tin Workers (AFL) lost fourteen union contracts after a three month strike against U.S. Steel.
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> The Department of Commerce and Labor was created in 1903. In 1905 the Supreme Court held unconstitutional a maximum hours law for bakers (Lochner V. New York, 198 U.S. 45).
>
> In 1906, the International Typographical Union (AFL) successfully struck for the eight hour day. In 1908, the Supreme Court found unconstitutional Section 10 of the Erdman Act, which outlawed "yellow-dog" contracts (U.S. v. Adair, 208 U.S. 161.)
>
> The Department of Labor was established in 1913. In 1917, the Sheriff of Bisbee, Arizona deported 1200 striking members of the Industrial Workers of the World.

The Industrial Workers of the World (IWW), commonly called the Wobblies, was formed in 1905. In all respects, the IWW was the antithesis of the AFL. It proclaimed that workers and capitalists had nothing in common and envisioned the final overthrow of the capitalists system to be accomplished by organizing workers into militant industrial unions. The IWW appealed to the unskilled, did not accept the sanctity of agreements with employers, and predicted the ultimate victory for socialism.

The life of the IWW was turbulent. The organization fought on battlefronts that ranged from coast to coast. Before the end of World War I, it had been involved in some 150 strikes. By 1912, it could boast around 100,000 members. The successes of the IWW reflected, in part, weaknesses of the AFL. It centered attention on the desperate needs of the masses of unskilled workers, gave impetus to industrial unionism, and forced traditional labor leaders to look beyond the confines of trade unionism.

For a number of reasons, however, the IWW did not last beyond World War I. It failed to consolidate and stabilize its membership, to accommodate internal differences or to withstand severely repressive measures applied by the government because of the IWW's anti-War stand.

During these years inroads were also being made in federal sector unionism. In 1906, the Post Office Clerks became the first national labor organization composed entirely of government employees to affiliate with the AFL. The Lloyd-LaFollette Act of 1912 gave Postal employees the right to organize and to petition Congress for redress of grievances. The National Federation of Federal Employees and the National Association of Letter Carriers were chartered by the AFL in 1917.

At the conclusion of World War I, many of labor's victories were achieved on the legislative front. The Railway Labor Act, passed in 1926 and applicable to railroad and certain other transportation workers engaged in interstate commerce, required employers to bargain collectively and not to discriminate against union members. In 1929, the Hawes-Cooper Act provided for regulation in interstate commerce of convict-made goods. The Davis-Bacon Act of 1931 mandated the payment of prevailing wage rates to laborers and mechanics employed by the contractors and subcontractors of public constructions. The 1932 Anti-Injunction (Norris-LaGuardia) Act outlawed federal injunctions in labor disputes except as specified and further prohibited "yellow-dog" contracts. The Fair Labor Standards Act of 1938 provided for maximum hours, minimum wages, and the abolition of child labor.

Still, labor did have its defeats on both the legislative and judicial fronts. For example, the child labor laws were repealed and the courts weakened the impact of anti-trust legislation. Attorney General A. Mitchell Palmer, in cracking down on alleged radicalism after World War I, conducted numerous raids throughout the nation upon the homes of known or suspected radicals, arresting everyone found on the premises. These raids were not directed against unions per se, but one of their effects was to inhibit the growth of the American labor movement. Faced with internal stagnation, the depression, and opposition from both government and industry, union membership began to

wane. Membership in the AFL, for example, dropped from 4,079,000 in 1920 to 2,127,000 in 1933.

The National Labor Relations (Wagner) Act of 1935 established the National Labor Relations Board and set forth the first national labor policy of protecting the right of workers to organize and to elect their representatives for the purpose of collective bargaining. The Preamble to the National Labor Relations Act sets forth, perhaps better than any other example, the reasons and philosophy which promoted much of the pro-labor legislation enacted during those years:

> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.
>
> Experience has proved that protection by law of the rights of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strike and unrest, by encouraging certain practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargaining power between employers and employees.
>
> It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and elimiante these obstructions when they have occurred by encouraging the practice and procedures of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

In the 1930's a problem which had been brewing for some time in the AFL finally came to a head, namely, the conflict between industrial and craft unionism. Broadly speaking, the question was whether workers in mass production industries should be organized on an industrial rather than a craft basis. The issue was hotly contested at the 1934 and 1935 AFL conventions. A minority of the Resolutions Committee favoring industrial unions was defeated at the 1935 convention. Shortly thereafter nine leaders in the pro-industrial faction met and organized a Committee for Industrial Organization to "encourage and promote organization of workers in mass production industries."

For two years there was continual bickering between the AFL and the Committee. All efforts at compromise failed and in May 1938, after the CIO unions left the AFL, the Committee for Industrial Organization was reconstituted as the Congress of Industrial Organizations with John L. Lewis as President. The American Labor movement was thus divided with one faction, the AFL, emphasizing craft unionism and the other faction, the CIO, concentrating on industrial unionism. This period of competition had the side effect of producing significant union growth. AFL unions became more oriented toward industrial workers and competed with the CIO for these new members.

During and after the New Deal Era, labor fought battles in Congress, in the courts, and on the picket line. A listing of significant achievements would include the following:

- 1935 – The Federal Social Security Act was enacted.
- 1936 – United Rubber Workers (CIO) won recognition at Good Year Tire and Rubber Company
- 1937 – General Motors recognized the United Automobile Workers.
- 1937 – National Labor Relations Act held constitutional by the United States Supreme Court (**NLRB v. Jones and Laughlin Steel Corp.**, 301 U.S. 1).
- 1941 – United Automobile Workers won recognition at Ford Motor Company after a ten day strike.
- 1942 – The United Steel Workers of America was formed.

During the late 1930's and 1940's there was considerable industrial expansion and intensive union organizing in the United States. For example, the combined membership in the AFL and in the CIO was up to 12,931,000 in 1945. The rise in union membership, coupled with the pent-up demands of workers resulting from the economic controls of World War II, led to a number of industry-wide strikes in the years between 1945 and 1947. The Republican-dominated Congress, pushed by public opinion and industry argument that the pendulum had swung too far on the side of labor, enacted in 1947 over President Harry S. Truman's veto the Taft-Hartley Amendments to the National Labor Relations Act. Amont other things, the Act expanded the NLRB from three to five members, outlawed the closed shop, enumerated union unfair labor practices, prohibited government employees from striking, gave to states the right to prohibit union shop clauses which required compulsory union membership, and gave management "free speech" rights to speak out against union organizing so long as there was no coercion, intimidation, threats, or promises by management.

The presidents of both the AFL and the CIO died in November 1952, and with their demise arose a unique opportunity to end the old and out-moded hostility between the two organizations. The new presidents, George Meany of the AFL and Walter P. Reuther of the CIO, were committed to settling the differences which had divided the American Labor movement for two decades. To this end they concluded, in 1953, a two year no-raiding agreement. A joint Unity Committee was later established to explore possible ways to effect a merger. In February, 1955, the Committee announced that full agreement had been reached for the merger of the AFL and CIO into a unified federation. The merger was quickly ratified by the affiliated unions, and in December 1955 the new AFL-CIO held its first convention. With the founding of the AFL-CIO approximately 16 million workers were brought into a single Federation.

The hopes and goals of the new Federation were several and included increasing union organizing in general and especially in the South; encouraging the merger of international union affiliates while preserving the existing concept of union autonomy; and eliminating much of the overlapping jurisdictions created by the merger of the AFL and the CIO.

These goals were not significantly achieved, and the American labor movement did not appreciably expand in the early years following the merger. A lessening of public support and a shift from the blue collar economy, where union membership strength has historically been greatest, to a white collar, service oriented economy accounted in large measure for this poor showing.

During the late 1950's the investigations of the McClellan Committee revealed instances of trade union corruption. Following these revelations the AFL-CIO established an Ethical Practices Committee which ultimately led to the expulsion of several affiliated unions, most notably the Teamsters, the largest union in the United States.

In the 1960's the United Automobile Workers, the nation's second largest union, became increasingly critical of the way the AFL-CIO handled such problems as organizing the unorganized, unemployment and poverty, civil rights, and foreign affairs. These differences, plus the personality conflict between George Meany and Walter Reuther, eventually resulted in the UAW being separated from the Federation.

Faced with corporate concentration and the emergence of corporate "conglomerates", in recent years unions have developed new methods and structures. For example, unions have engaged in multi-union coordinated bargaining - several unions negotiating with a single company, such as General Electric, or a single industry, such as copper.

The hope of the AFL-CIO merger for eliminating competing jurisdictions began to take shape in the mid-1960's and is continuing to the present time. Among union mergers in the past few years are the following:

United Packinghouse Workers and the Amalgamated Meat Cutters.

Pulp, Sulphite and Paper Mill Workers and the United Papermakers and Paperworkers.

Five postal unions merged to become the American Postal Workers Union.

The Journeymen Stonecutters, the Mine, Mill and Smelter Workers, and District 50 Allied and Technical Workers have all merged into the Steelworkers Union.

Several Unions in the printing industry have merged.

Professional Air Traffic Controllers and the Marine Engineers Benevolent Association.

Hawaii Government Employee's Association and the Rhode Island State Employees Association merged with the American Federation of State, County and Municipal Employees.

The American Federation of Teachers and the National Education Association are debating merging at the national level, and in some instances state and local affiliates of these two organizations have already merged.

The Los Angeles County Employees Association and the Santa Clara County (Calif.) Employees Association have merged with the Service Employees International Union.

Additional mergers have occurred, and more are anticipated in the future, especially among public employee unions and associations.

Another goal of the AFL-CIO merger convention - that of organizing the unorganized workers - appears to be taking shape, especially among government workers at all levels, farm workers, and generally among white collar workers. Coupled with this has been an increasing militancy among formerly non-union groups, such as engineers and other types of professionals, which has caused the traditionally docile professional associations to become more militant and to move closer to the traditional trade union model.

The last ten years have seen a remarkable growth in public sector unionism. At the Federal level, Presidents John F. Kennedy and Richard M. Nixon acknowledged the importance of labor relations by issuing four executive orders on labor-management relations in the Federal service. Figures for the Federal service show that in 1971 postal unions represented 88 percent of the postal employees and that 53 percent of all non-postal executive branch employees were represented by unions holding exclusive recognition rights.

At the state and local level, public employee organizations have also shown tremendous growth. The National Education Association has over a million classroom teachers in membership. Its AFL-CIO rival, the American Federation of Teachers, has had an increase in membership of better than 140 percent in less than five years. The New York Civil Service Employees Association has more than 100,000 members and the American Federation of State, County and Municipal Employees has 650,000 members. By 1970, twenty-two states had adopted laws to provide for some form of collective bargaining by public employees on the state and/or local level. In 1972, three states, Hawaii, Pennsylvania, and Alaska, had adopted collective bargaining laws granting public employees the right to strike.

Not since the surge of unionism in the 1930's has the American labor movement experienced anything like the growth of public sector unionism in the 1960's All indications are that this growth will continue.

Thus, the decade of the 1970's holds forth an American labor movement which is undergoing both structural and ideological change, the outcome of which is still unpredictable. It may be assumed, however, that the American labor movement will continue to play an important role in the economic, social, and political future of America.

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STRUCTURE AND FUNCTION OF
THE AMERICAN LABOR MOVEMENT

PREPARED BY
LABOR RELATIONS TRAINING CENTER

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According to the Department of Labor, membership of 185 national and international unions headquartered in the United States reached a record high of 20.7 million in 1970. Included in this number were 16 million members in 114 unions affiliated with the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and approximately 4.8 million members in unaffiliated national and local independent unions. In the years between 1964 and 1970 unions recruited approximately 500,000 workers annually, indicating that the American labor movement is still a dynamic force in the United States.

THE AFL-CIO

The chief components of the AFL-CIO are the national and international unions, internally the trades and industrial departments, and the state and local central bodies. Structurally speaking, the AFL-CIO is the top unit in the American labor movement. *(See Chart I).* In terms of power, however, the AFL-CIO neither rules nor dominates its affiliated unions; rather, it depends on the affiliated unions for its existence. The AFL-CIO can exert little influence over non-conforming unions other than through expulsion, imposition of sanctions, or withholding of services.

Conventions

The supreme governing body of the AFL-CIO is the biennial convention. Each union affiliated with the Federation is entitled to convention representation according to the average membership on which per capita tax has been paid. This means that voting strength lies with those unions which have the largest membership. Between conventions the executive officers, assisted by the Executive Council and the General Board, direct the affairs of the AFL-CIO.

Executive Officers

The executive officers of the AFL-CIO are the president and the secretary-treasurer. The president, as chief executive officer, has authority to interpret the constitution between meetings of the Executive Council. He also directs the staff of the Federation and exercises general supervision over Federation affairs. The secretary-treasurer is responsible for all financial matters. At the current time George Meany of the Plumbers' Union and Lane Kirkland of the Marine Engineers are respectively president and secretary-treasurer of the AFL-CIO.

Executive Council

The Executive Council is the unit of the Federation empowered to carry out policy as determined by the convention. It must meet at least three times a year, on call of the president. Membership of the Executive Council consists of the president, the secretary-treasurer, and thirty-three vice presidents. Because members of the Executive Council are generally presidents of the larger or strategically powerful unions, the Council is the single most important body in determining and carrying out AFL-CIO policy. Among the duties of the Executive Council are: proposing and evaluating legislation of interest to the labor movement; assisting affiliated unions in organizing activities; chartering new national and international unions; and policing and keeping the federation free from corruption and communist or fascist influence. To achieve the latter, the Council has the right to investigate any affiliate accused of wrong doing and, at the completion of the investigation, make recommendations or give directions to the affiliate involved. The Council also is given the right to (1) conduct hearings on charges that a Council member is guilty of malfeasance or maladministration, and report to the convention recommending the appropriate action; (2) remove from office or refuse to seat, by two-thirds vote, any executive officer or council member found to be a member or follower of a subversive organization; (3) hear appeals in jurisdictional disputes.

The General Board

Rounding out the top of the AFL-CIO structure is the General Board, consisting of all thirty-five members of the Executive Council and a principle officer of each affiliated union and department. The General

Board meets upon call of the president and acts on matters referred to it by the executive officers or the Executive Council.

Trade and Industrial Departments

The AFL-CIO constitution provides for six trade and industrial departments. These seek to promote the interests of specific groups of workers which are in different unions but have certain strong common interests. Most of the unions affiliated with the AFL-CIO are also affiliated with one or more of the departments. At present the six departments are: (1) the Building and Construction Trades Department; (2) the Metal Trades Department; (3) the Union Label and Service Trades Department; (4) the Maritime Trades Department; (5) the Railroad Employees Department; and (6) the Industrial Union Department. There is also a Government Employees Council (made up of all unions having public employee members) which currently does not have department status.

Standing Committees and Staff Departments

The constitution authorizes the president to appoint standing committees to carry on legislative, political, educational, civil rights, and other activities. There are currently fifteen of these committees.

Membership is generally composed of various members of the AFL-CIO General Board, that is, the officers of the Executive Council and the principle officer of each affiliated union and department. These committees operate under the direction of the president and are subject to the authority of the Executive Council and the convention. From the periodic deliberations of the standing committees come policy statements or recommendations and many of the resolutions considered and promulgated by the biennial convention.

Staff departments are established where appropriate under the direction of the president. They operate in the same functional fields as the standing committees and in whatever other fields may be determined by the president, the Executive Council, or the convention. The staff departments, unlike the standing committees, are headed and staffed by hired, full-time professional employees of the AFL-CIO.

One of the most important standing committees is the Committee on Political Education (COPE). This committee is engaged in extensive political activity and makes a constant effort to swing the electoral and financial support of labor behind candidates and policies that are most desirable from labor's point of view. COPE analyzes the voting record of elected officials and publicizes these records as part of its continuing political education program. As elections approach, candidates are endorsed, press releases are prepared and disseminated, brochures are printed, and political rallies are held. Committee members at the local level urge unregistered voters to register and try to get voters to the polls. There may even be house-to-house and telephone canvassing in support of pro-labor candidates.

To further the organizing activities of the AFL-CIO, Article X of the constitution established a separate Department of Organization to operate under the general direction of the president. The director is appointed by the president, subject to approval by the Executive Council. The department has its own staff, which is situated in regions throughout the United States, and other resources necessary to carry out its activities. The organizing staff provides organizing assistance to affiliated unions upon request.

Local and State Central Bodies

At the local and state level are two types of AFL-CIO organizations with which local unions may affiliate *(Chart II)*. The local central bodies receive their charters from the AFL-CIO. Their members are the local unions within a stipulated geographic area. The locals send delegates to meetings which are held monthly or bi-monthly. An important function of the local central body is to unite the political efforts of local unions. They lobby for union interests, endorse candidates for office through local Committee on Political Education, try to secure appointments of officials friendly to labor, facilitate cooperation between unions, promote the union label and respect for picket lines, and represent organized labor at public functions. Often national unions do not require their locals to affiliate with local central bodies and currently only about 50 per cent of the AFL-CIO locals are affiliated with their respective local central bodies.

At the state level there are state central bodies chartered by the AFL-CIO. The membership of these

bodies is made up of local unions and local central bodies within a particular state. A main function of these state federations is political action: through state Committees on Political Education they monitor legislation and make a strong effort to deliver votes to endorsed candidates. They are sometimes active in assisting unions in organizing efforts, carrying on public relations promotional activities for their constituents, providing research data to affiliated unions, and coordinating and promoting labor educational programs within their states.

Jurisdictional Problems

Former AFL and CIO affiliates joined the new Federation as fully autonomous unions and retained the same jurisdictional rights they held prior to the merger. These principles are expressed as follows in article III, section 4 of the constitution: "The integrity of each . . . . affiliate of this Federation shall be maintained and preserved." The concepts of autonomy and jurisdictional rights find further support in article III, section 7, which gives the Executive Council the right to issue charters to new organizations only if their jurisdiction does not conflict with that of present affiliates because "each affiliated national and international union is entitled to have its autonomy, integrity, and jurisdiction protected and preserved." On the problem of craft versus industrial form of organization, the issue primarily responsible for the 1935 split, the new constitution recognizes that "both craft and industrial unions are appropriate, equal, and necessary as methods of trade union organization . . . ." (art. VIII, sec. 9). The constitution acknowledges the existence of overlapping jurisdictions which might lead to conflicts within the Federation. Affiliates are urged to eliminate such problems "through the process of voluntary agreement or voluntary merger in consultation with the appropriate officials of the Federation" *(art III, sec. 10)*.

New and enlarged machinery to replace the procedures previously provided for under the No-Raiding Agreement *(art III, sec. 4)* was adopted at the 1961 convention and incorporated in a new section of the constitution, article XX, Settlement of Internal Disputes. Under the terms of this article, affiliates are required to respect the established collective bargaining and work relationships of every other affiliate. In a dispute, the case first goes to a mediator chosen from a panel of mediators, "composed of persons from within the labor movement" *(sec. 8)*. Should the mediator not be able to settle the dispute within 14 days, it is then referred to an impartial umpire selected from a panel "composed of prominent and respected persons . . . ." *(sec. 9)*, for a decision which is to go into effect 5 days after it has been handed down, unless an appeal has been filed. An appeal case is first referred to a sub-committee of the Executive Council which can either dismiss it or submit it to the full Executive Council for a final decision. A variety of sanctions are provided against noncomplying unions, including loss of the right to invoke the disputes settlement machinery and possible suspension. The Federation is further authorized to publicize the fact that a union has refused to comply with a decision and it can extend "every appropriate assistance and aid" *(sec. 15)* to an aggrieved union.

A panel of impartial umpires and a panel of officers of international unions handle the mediation of internal disputes. All members of the Federation's Executive Council serve on the subcommittees which screen appeals and hear complaints of noncompliance.

Functions of the AFL-CIO

Basically, the function of the AFL-CIO is to promote the interests of unions and workers. The specific means to accomplish this end are quite varied. One major task is to encourage organization among the unorganized. As mentioned, earlier, the federation is also deeply involved in political activity, primarily through its Committee on Political Education (COPE). Top officers frequently testify before congressional committees and the labor lobby is very active during sessions of Congress. The AFL-CIO also maintains legal, education, research, editorial, and other staffs that provide services to affiliated unions and otherwise promote the cause of labor by the application of their specialized skills.

A glance at the policy resolutions adopted by the AFL-CIO at its 1971 convention illustrates the numerous and diverse local, national, and international issues to which the federation directs its attention. For example, the AFL-CIO:

> Resolves to work for legislation guaranteeing public employees the same right to strike as is accorded employees in the private sector.
>
> Supports enactment of a national health security law.

Urges the federal government to develop a "comprehensive and coordinated national inventory of need for housing, community facilities and public services."

Gives priority attention to closing capital-gains loopholes and to ending the special tax privileges of oil, gas, and other mineral industries.

Urges modernization of state and local governments and increasing the flow of federal catagorical grants-in aid to state and local governments for specific programs.

Supports the construction of a feasible atomic breeder reactor technology.

Seeks a $2.50 per hour minimum wage.

Endorses legislation to remedy problems associated with meaningless and ineffective warranties on consumer products.

Favors a "comprehensive reorganization and fundamental improvement of the unemployment insurance system under a single federal program."

Seeks to increase the minimum basic family assistance payment "to $3000 and to no less than the poverty level (currently $3,900) within a few years."

Urges the federal government to "secure a gradual reduction of strategic offensive as well as defensive nuclear and other sophisticated weapons."

This is but a cursory look at the diverse issues which receive the attention of the Federation. It serves, nevertheless, as a rough indication of the many social, political, economic, and scientific issues on which the time, money and energy of the AFL-CIO is expended.

NATIONAL UNION MEMBERSHIP TRENDS AND CHANGES

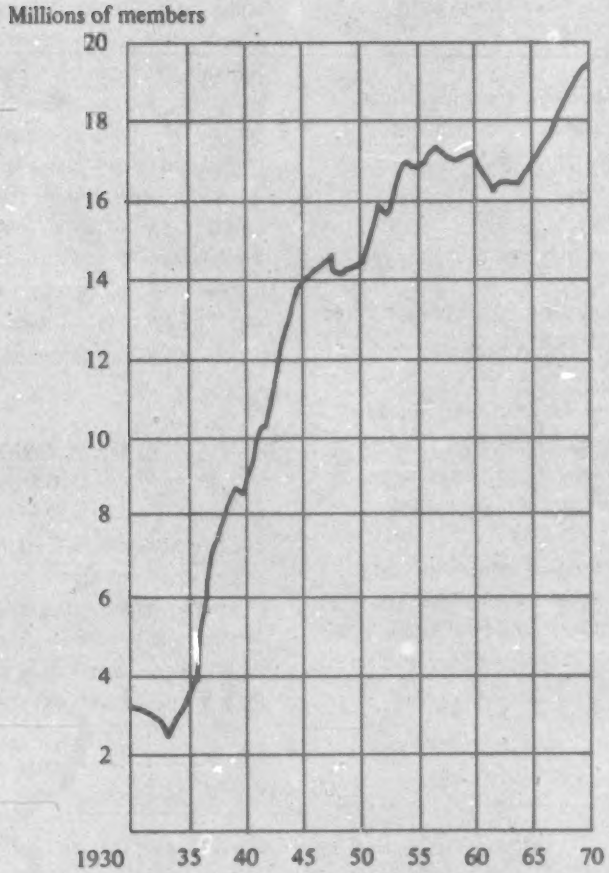
After the enactment of the Wagner Act in 1935 and until the end of World War II, union membership scored a four-fold gain. In subsequent years membership first stabilized and then grew slowly, reaching a peak of 17.5 million (exclusive of Canada) in 1956. It declined again in the late fifties and early sixties, but began to recover during the mid-sixties. As chart III indicates, union membership (exlcusive of Canada) has risen each year since 1964. It reached 19.4 million in 1970, the highest point in labor history. Continued membership gains rest with the general economic state of the country and labor's ability to organize workers in the public sector and other growth areas, particularly the service industries and white-collar employees.

The Teamsters (Ind), the Nation's largest union, registered a substantial growth during the period 1951 to 1970, rising from one million to a high of 1,828,500, the largest absolute increase for any union. The Auto Workers and the Steelworkers reflected the cyclical movement of business activity, e.g., both suffered sharp declines in the 1957-58 and 1960-61 recessions and both have gained members as employment in their respective industries has grown in recent years. The UAW recorded a total of 1,485,600 members in 1970, surpassing its previous high of 1,472,700 in 1968. The Steelworkers have continued to maintain membership above one million from 1966 through 1970.

In 1968, the largest unions, each with 400,000 members or more, numbered eleven.

CHART III

MEMBERSHIP OF NATIONAL
AND INTERNATIONAL UNIONS [1]
1930 - 1970



[1] Excludes Canadian membership but includes areas outside the United States. Members of AFL-CIO directly affiliated local unions are also included. For the years 1948-52, mid-points of membership estimates, which were expressed as ranges, were used.

These eleven unions covered 47 percent of total membership in 1968, compared with 45 percent in 1966 and 43 percent in 1964 and 1962. At the other extreme, 88 unions, or close to one-half of all unions (each with 25,000 workers or less), represented 3 percent of total membership. All indications thus point to a growing concentration of union membership in a small number of unions.

This is also reflected in the trend of the past few years towards union mergers. For example, among union mergers in the last few years are the following:

United Packinghouse Workers and the Amalgamated Meat Cutters

Pulp, Sulphite and Paper Mill Workers and the United Paperwokers and Paperworkers

Five postal unions merged to become the American Postal Workers Union

The journeymen Stonecutters, the Mine, Mill and Smelter Workers, and District 50 Allied and Technical Workers have all merged into the Steelworkers Union

Several unions in the printing industry have merged

Professional Air Traffic Controllers and the Marine Engineers Benevolent Association

Hawaii Government Employees Association and the Rhode Island State Employees Associations have merged with the American Federation of State, County and Municipal Employees

The American Federation of Teachers and the National Education Association are debating merging at the national level, and in some instances state and local affiliates of these two organizations have already merged

The Los Angeles County Employees Association and the Santa Clara County (Calif.) Employees Association have merged with the Service Employees International Union

In recent years the most noteworthy shifts have occurred among public employee unions. Of 11 unions that gained 100,000 members or more in the 1960-70 period (Chart IV) the American Federation of Government Employees registered the greatest growth, going from a membership of 70,300 in 1960 to 324,900 in 1970, an increase of 362.2 percent. Ranking second in overall growth was the American Federation of Teachers with a growth rate of 265.3 percent over the past ten years, gaining 149,100 members over its membership of 56,200 in 1960. The American Federation of State, County, and Municipal Employees was third in growth, going from a membership of 210,000 in 1960 to 444,500 in 1970, an increase of 111.7 percent. Both the Service Employees and the Laborer's also count most of their growth during this period to public employee organization.

NATIONAL UNION STRUCTURE AND FUNCTION

The size, strength, and method of operation among unions vary considerably and for this reason it is imprudent to generalize about the structure of all national and international unions. However, the organizational make-up of most unions is similar (see chart V) and resemble that of the AFL-CIO.

Chart IV

Unions that gained 100,000 members or more, 1960-70

Union	1960	1968	1970	Number	Percent
Auto Workers (Ind.)	1,136,100	1,472,700	1,485,600	349,500	30.8
Teamsters (Ind.)	1,484,400	1,755,000	1,828,500	344,100	23.2
Retail Clerks	342,000	552,000	605,200	263,200	76.2
Government (AFGE)	70,300	294,700	324,900	254,600	362.2
State, County	210,000	364,500	444,500	234,500	111.7
Service Employees	272,000	389,000	435,000	163,000	59.9
Communications Wrkrs.	259,900	357,500	421,600	161,700	62.2
Electrical (IBEW)	771,000	897,100	921,700	150,700	19.5
Teachers	56,200	165,000	205,300	149,100	265.3
Laborers	442,500	553,100	580,000	137,500	31.1
Engineers, Operating	291,000	350,000	392,800	101,800	34.9

Union Conventions

The supreme authority and sole legislative body of a union is the general convention, composed of delegates from all its local organizations. Like the AFL-CIO convention, the number of delegates that each local organization sends to the general convention is generally proportionate to the size of the local membership. However, as a means to avoid too great a domination by large locals, a common practice is to allow a decreasing ratio of delegates as the size of the local increases. Conventions normally meet every two years, and are required by law to meet at least every five years.

Union Officers

A typical union will have a president, a secretary-treasurer, an executive board or council, and a number of appointed officials such as organizers, auditors, national representatives, editors, educational and research staff. The union president, whose authority is granted through the constitution, is responsible for the day-to-day operations of the union. In some unions the presidency is an honorary position while in other unions the office of the president houses immense power. The responsibilities of the secretary-treasurer and other officers also vary from union to union.

The Executive Board

The Executive Board is the highest authority between conventions. It executes the instructions of the convention and sets policy between conventions.

Function of the Union

There are several key functions performed by national unions, which are the promotion of organization within the trade or industry, bargaining directly with employers or assisting locals with their bargaining, lending assistance to strike bound locals and keeping a close watch on legislative, political, and legal developments. The national unions may also handle the health and welfare programs of the union, publish a journal, and operate some sort of research and education programs. Recent years have witnessed an increasing centralization of power in the national union at the expense of the affiliated locals. Factors accounting for this include the spread of industry-wide or regional bargaining and the need for technical and specialized data that only the resources of the national union can provide.

Intermediate Union Offices

Often inserted between the national union and the local union is an intermediate body in the form of a district or regional office or council. The director of this office exercises a general type of supervision over local unions within a defined geographic area. The district director, who may be either elected or appointed, assists the locals with bargaining and organizational problems while carrying out national policy in his area.

LOCAL UNION STRUCTURE AND FUNCTION

The number of local unions chartered by national and international unions in 1968 was 77,183. More than one-half of all the locals were affiliated with only eighteen unions, each having 1000 locals or more. At the opposite extreme, 136 unions, each with less than 400 locals, had less than one-fifth of the total number of locals. The average local has about 250 members. Regardless of size or numbers, however, the local union is the primary concern of the rank and file members.

Structure of the Local Union

The local union is the building block of the national unions, and indeed, of the entire labor movement. Locals have widely differing jurisdictions. Some encompass just a single plant. With a trend toward white-collar organization, however, there are often two or more locals in the same plant – one for production workers and the other for clerical. Frequently there are separate locals for members of skilled crafts within the same plants.

The formal organization of a local union is normally determined by its constitution. In most locals the membership meeting is the supreme authority. These meetings approve the admission of new members, act as the last local resort on disciplinary actions, review financial administration, discuss proposed collective bargaining terms, and ultimately approve or reject the collective bargaining agreement, approve the calling of

strikes, and pass on amendments to the local union constitution and by-laws.

Local Union Officers

Local union constitutions also govern the eligibility, election, and terms of office of local union officers. The local officers – usually president, vice-president, secretary-treasurer, recording secretaries, trustees, and, in craft locals, the business agent – are elected by the membership in secret-ballot elections. Depending on the size of the local, officers may be full-time union employees or they may receive only token renumeration for their union services. A typical small-plant local might have a part-time president and a secretary-treasurer who may or may not be a full-time officer. In craft type industries, such as the building trades where employment is scattered among many small employers, locals will often have a business manager who is invariably the most important officer in the local. Among other duties, he is the chief bargainer for the local; protects the local's jurisdiction against rival claims; and policies the worksite to see that only union members in good standing are employed and that union conditions are complied with. Union stewards work at their regular jobs but have the right, usually provided in the contract, to use working time to represent the union through investigating and handling employee complaints or grievances.

The Executive Committee

The executive committee consists of the principal officers of the local. Its primary responsibility is to determine general local union policy. It has sole control over administrative business such as financial questions, community relations, the writing of by-laws, and appointment of committees. Employee grievances are normally handled by the executive committee, although in some locals a separate grievance committee exists.

Functions of the Local Union

In a number of areas, the functions of the local union overlap those of the national, especially in the area of collective bargaining. Functions that are primarily within the local's province include day-to-day policing of the union-management contract, processing grievances of workers, managing the conduct of strikes, and collecting dues and assessments.

Locals are also engaged in such tasks as educating members about their rights under social-security laws, carrying on programs of political action, cooperating with civic groups in community affairs, and promoting social functions of its members.

CONCLUSION

The objective of this paper has been to acquaint the reader with the American Labor Movement as it exists today. To accomplish this, attention was directed to the structure and function of the AFL-CIO and its constituent elements, the national and local union. The point was made that while the AFL-CIO is the top structural unit in the American Labor movement, it has little real power over affiliated members. The heart and strength of the American labor movement is, in fact, the national union.

In the same manner that the American labor movement derives its strength from the national union, so too does the national union derive its strength from the local union. Locals are the building blocks of the national union. Without them there would be no national union. Indeed, without them there would be no labor movement.

Thus both the AFL-CIO and national unions depend upon subordinate bodies for their strength. But these subordinate bodies, in turn, derive their strength from the larger bodies to which they belong: national unions depend upon the AFL-CIO and local unions depend upon national unions for support and services. In short, all three of these elements - the AFL-CIO, the national union, and the local union - exist in mutually beneficial relationships. Each derives its existence from and exists for the other two. And it is within this intricate relationship that the essence of the American labor movement is found.

MANAGEMENT RESPONSE TO THE ORGANIZING CAMPAIGN

PREPARED BY
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MANAGEMENT RESPONSE TO THE

ORGANIZING CAMPAIGN

The "management team" does have certain options open to it during the organizing period. Assuming the procedures outlined for the pre-organizational period have been established, management should be able to:

- Quickly ascertain that a concerted organizing drive has begun.
- Make certain that the entire management team is aware of the fact that an organizing drive has begun.
- Review employee and union rights with the management team.
- Review management rights and responsibilities.
- Review roles and responsibilities of the management team.
- Conduct additional briefing and training if needed.

Specifically, management should be prepared to respond to union actions and requests in a manner that reflects management interests while at the same time conforms to the intent of legislation (where it exists). Management should not abrogate its duty to manage.

The following checklist reveals some of the things management must do during a union organizing campaign.

Management Should:

- Identify the union or unions involved and their leaders for analysis by the management team.
- Keep detailed records of union literature, leaflets, promises, etc.
- Meet with the unions involved to attempt to establish ground rules governing campaign activities.
- In the absence of an agreement of the parties, establish specific ground rules for the conduct of the campaign.
- Treat all parties equally.
- Inform employees of election procedures.
- Inform employees of the importance of voting.
- Prohibit organizing activities during working hours and in work areas.
- Prohibit the solicitation of new members or collecting of dues on government time.
- Provide list and names and information identifying employees in the unit (position, title, grade, and duty stations).
- Enforce work rules impartially and in accordance with customary practices, irrespective of the employee's membership or activity in a union.
- Discipline for cause so long as such action follows customary practice and is done without regard to union membership or non-membership.
- Assign work, overtime, etc, in a customary manner so long as it is done without regard to union membership or non-membership.

The following are some of the things management may do. However, in the absence of unusual circumstances, management should make sure that such actions are in its best interests.

Management May:

- Permit the use of its facilities for meetings (outside the employees' regular working hours and subject to safety and security regulations).
- Grant use of agency "house organs" to give notice of union meetings, etc.
- Make available office space to a union under unusual circumstances *(e.g., when a workplace is located in a remote area)*.
- Provide for posting and distribution of literature.
- Require that literature be submitted for review and approval.
- Prohibit posting of libelous literature.
- Limit material distribution to non-work areas.

The following are some of the things management should not do since they may be grounds for unfair labor practices or grounds for setting aside an election.

Management Should Not:

- Discriminate against any of the parties involved.
- Make promises or threats designed to influence an employee in the exercise of his right to form, join, or assist a labor organization or to refrain so.

- Discipline employees for union membership or activity.
- Discriminate in assignment of work, overtime, etc., because of union membership or activity.
- Enforce rules against union supporters which are not enforced against non-supporters, or which have not as a matter of past practice been enforced.
- Question employees about their union activity or sentiments.
- Conduct itself in a way which would indicate to the employees that it is watching them to determine whether they are participating in union affairs.
- Assign work or transfer employees so that those active in behalf of a union are separated from other employees who seem interested in a union.
- Ask employees how they plan to vote in an election.
- Urge employees to try to persuade others to oppose a union.
- Prevent employees from soliciting union membership during their non-work time on agency premises so long as such does not interfere with work being performed by others.
- Make anti-untion remarks or speeches to employees.
- Prohibit off-duty distribution of literature in non-work areas.
- Prohibit wearing union insignia (unless special conditions exist.)
- Show partiality in providing services or facilities to any parties involved.
- Prohibit anti-union activity by employees, other than supervisors and managerial employees.
- Refuse outside union organizers access to employees on the premises if other means of communication are not available.

THE MEANING OF EXCLUSIVITY

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THE MEANING OF EXCLUSIVITY

Meaning of Exclusivity

An exclusive right or privilege is one which is excercised only by the person or group authorized to use it, while all others are forbidden to interfere. It excludes others from participating, from enjoying the same privilege.

Political Democracy and Exclusivity

In a representative political democracy, the governing power vested in the people is exercised by them through a system of representation. The elected representative chosen in a free election is exclusively authorized to represent the electorate and speak on its behalf during the term of office. The elected representative represents all of the electorate and in matters of government is its sole and exclusive representative.

Industrial Democracy and Exclusivity

In the United States, we have established a unique form of representative democracy at the workplace. Many of the concepts of our representative political democracy have been carried over. Specifically, the operation of the doctrine of exclusivity has been adopted as the corner stone of our system of industrial democracy.

As our system of political democracy was mandated by the ratification of the U.S. Constitution by the states, it took an enactment of the U.S. Congress to firmly establish industrial democracy. Support of the collective bargaining process was established as public policy by the enactment of the National Labor Relations Act (The Wagner Act) in 1935 and Supreme Court validation in 1937. However, this law applied only to private industry engaged in interstate commerce. Subsequently some states enacted separate laws embodying the same concepts and made them applicable to the private sector engaged in intrastate commerce. In the last few years, many state and local governments have passed collective bargaining legislation applicable to state and local government jurisdictions. By Presidential executive order, collective bargaining has been extended to the Federal government.

Public and private sector collective bargaining laws uniformly grant and protect employee and union rights. Their objective is to give employees a voice in decisions about the circumstances under which they work, i.e. industrial democracy or collective bargaining. These rights, which are legally protected, are operative in four principle areas:

1. The right of employees to join, form or assist a labor organization, or not do so;
2. The right of a labor organization to organize the unorganized into a cohesive force;
3. The right of an exclusive union to make demands which an employer is expected to negotiate; and
4. The right of the union to put pressure – exert power – on the employer to attain its goals.

Any action by an employer designed to interfere with employee's rights to organize is unfair/illegal. Nor may an employer create or dominate the employee organization; or discriminate against employees because of their protected union activity.

Important and essential to the collective bargaining process is the establishment of the machinery by which employees choose their exclusive bargaining representative. Collective bargaining laws establish such machinery so that employees can:

1. Indicate whether they want union representation, and
2. Indicate which union they want to represent them.

When a union is certified as the exclusive representative, either by a majority of the votes cast in a secret ballot election as is required in the Federal Sector and many states, or by proof of representation of a majority of

the employees in the unit, as is permitted in some jurisdictions, the union has the exclusive right and responsibility to represent all bargaining unit employees. The employer has the legal duty to recognize that union, barg.in with it and attempt to reach an agreement with it. Where labor laws exist, it is illegal (unfair labor practice) for an employer or a union to engage in any action which interfer s with that intended result. Collective bargaining laws specify, however, that the duty to bargain in good faith does not compel either party to agree to a proposal or require the making of a concession. The matter of agreement or concessions is left to the bargaining process itself.

Once a union has been designated as the exclusive representative, the employer is obligated not only to bargain with that union but also not to bargain with any individual or groups of employees concerning those matters within the scope of bargainable subject matter. The key to the operation of the doctrine of exclusivity is that the employer shall negotiate only with the employee's designated representative. However, this does not preclude the employer from discussing with a religious, veterans, social, fraternal, social action or professional group purporting to represent some of its employees on matters of specific interest to that organization as long as such discussion is limited and does not take on the character of negotiation on matters within the scope of bargaining.

In the public sector, management must take particular care in this area, for it is constantly confronted with a plethora of groups requesting and/or demanding some kind of dealings – equal employment opportunity groups, professional associations, veterans organizations, recreation associations, etc. And we must also weigh and integrate the "treat each employee as an individual" and "participatory management" theories of management with the collective bargaining process and exclusive representation.

The priority goals of the Equal Employment Opportunity program present public management with a particular problem when a civil rights organization wants to confer with us. For one thing, issues of interest to members of these groups are often of general interest to all employees – upward mobility, training, child care, etc. In addition, these groups may be dissatisfied with the kind of representation members of minority groups are getting from the exclusive labor organization. Thus, it may be unacceptable to them for management to insist that they work through the exclusive labor organization. The appropriate management approach in this type of situation is to get the union involved. Where this would be difficult/impossible/unwise, at a minimum, management must be very careful to hear out such groups – but not to negotiate with them – and to keep the exclusive labor organization informed about what took place. Failure to do so could result in unfair labor practice charges against management.

Exclusivity further precludes management from voluntarily offering to its employees any improvement in the terms of employment within the scope of bargaining. It may seem strange that an employer's unilaterally granting an employee benefit should be construed as illegal/unfair. The rationale is simply that by such action an employer engages in an attempt to undermine or undercut the exclusive union rather than dealing through the union which the employees have chosen as their exclusive bargaining representative. Such unilateral management action is unfair/illegal. The employer is acting counter to the philosophy of collective bargaining, and specifically the doctrine of exclusivity – that such conditions of employment within the scope of bargaining should be determined bilaterally by mutual agreement, with the full participation of the employees' bargaining agent rather than by management exercising unilateral authority.

The operation of the doctrine of exclusivity and the employer's duty to bargain with the employees' exclusive representative goes even further. The duty of management to bargain includes the obligation to furnish the union with sufficient information to enable it to bargain intelligently. Further, the employer's responsibility to bargain in good faith is not satisfied by merely meeting with union representatives and discussing terms with them. The real question is whether or not the employer is dealing in good faith, or engaged in mere surface bargaining without any intent of concluding an agreement on a give and take basis. A determination of good faith is normally the result of an examination and appraisal of the management's entire dealings with the union.

In summary, the implications of exclusivity are:

For management –

- Must deal with the exclusive bargaining representative on all matters appropriate to exclusive bargaining unit representation.

- Right to deal individually with employees is limited.
- Right to deal with other organizations purporting to represent employees or certain of their interests is limited.

For the union –

- Represents all employees in the bargaining unit, whether they are members or not.
- Must represent all employees in the bargaining unit, without discrimination.
- May negotiate a binding collective bargaining agreement covering all employees in the bargaining unit.

For employees –

- Are bound by the terms of the agreement negotiated by management and the exclusive union.

GOOD FAITH BARGAINING –

SOME GUIDELINES FOR PUBLIC MANAGERS

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RN III-2

GOOD FAITH BARGAINING – SOME GUIDELINES FOR PUBLIC MANAGERS

Good faith in collective bargaining is the key to an effective and productive labor-management relationship. The concept of good faith is so critical to the collective bargaining process that it is reflected in the labor law and policy of the private, Federal, and public sectors.

Though "good faith" is the crucial element for effective collective bargaining, its definition is elusive because "good faith" determinations are made on a case by case basis. For public sector managers, the problem of determining what constitutes good faith is doubly complicated because of the generally limited amount of case law concerning good faith dealings in the public sector.

In states where comprehensive labor laws exist, there is generally a requirement that both parties deal in good faith in the collective bargaining relationship. As an example, the Massachusetts state employee law reads:

> "For the purposes of collective bargaining, the department or agency head or his designated representative and the representative of the employees shall meet at reasonable times and shall confer in good faith with respect to conditions of employment, and shall execute a written contract incorporating any agreement so reached, but neither party shall be compelled to agree to a proposal or make a concession."

Where state labor laws require good faith bargaining, the refusal to bargain in good faith is regarded as an unfair labor practice. To again cite the Massachusetts state law:

> Section (8): Department or agency heads or their designated representatives or agents are prohibited from ... refusing to bargain collectively in good faith with the representative chosen by the majority of employees in the appropriate collective bargaining unit ...

Where no state law exists, public managers must not, in the interest of a constructive, stable and productive labor-management relationship, disregard the concept of good faith. Bad faith dealings can lead to a counterproductive relationship, increased hostility, and, potentially, militant job actions.

Management must not assume that the good faith requirement applies only to the negotiation of a contract. From the moment that a union is recognized or certified as the exclusive bargaining representative of a unit of employees, management must act in good faith in all its dealings with the labor organization. Collective bargaining is a continuous process of consultation and negotiation on matters appropriate to the scope of bargaining; management must deal in good faith with the exclusive labor organization on amendments or changes in contracts, resolution of grievances and settlement of problems not covered by existing agreements. The continuous duty to bargain in good faith in all aspects of the collective bargaining process has been affirmed by the U.S. Supreme Court (private sector), state courts in both the private and public sector, and appropriate appellate bodies in the Federal sector.

The private sector experience on the subject of good faith has been extensive. Although the National Labor Relations Act does not apply to the public sector, valuable insight into the concept of good faith may be gained by examining the private sector case law. (A summary of the private sector experience may be found in RN IV-4.) The types of issues raised in the private sector serve to alert public managers to areas susceptible to charges of bad faith bargaining.

The purpose of this paper is to explore the implications of the good faith requirement in the pre-negotiation and contract administration stages. A full discussion of good faith at the negotiations stage may be found in "Good Faith Bargaining – Private Sector Experience" (RN IV-4).

How, then, can management most successfully maintain good faith? The most basic principle to be observed is to meet at reasonable times and places to confer on a give-and-take basis on matters appropriate to the scope of bargaining. Two basic considerations flow from this definition.

The first point is that, although management must confer on a give-and-take basis, management is not obligated to make a concession on a specific issue. In determining whether management acted in good faith, a third party would look to the history of the bargaining relationship. If management has indicated a willingness to compromise, and has made concessions or compromises on other issues, management is likely to be found in good faith if no other abrogations of good faith have occurred.

The second basic consideration is that, because of the nature of the exclusive relationship, management must negotiate only with the exclusive labor organization on matters appropriate to the scope of bargaining. To negotiate with other groups, or to bypass the exclusive representative and deal directly with employees in the unit, would be a violation of the good faith concept.

Furthermore, management's ability to take unilateral actions on matters within the scope of bargaining is limited. Unless the contract contains in clear and unmistakeable language a waiver of the union's rights to negotiate on matters within the scope of bargaining, management is required to deal with the union before any proposed change or amendment is instituted.

Management's duty to continuously confer and negotiate with the exclusive union is a thorny area. The so-called "zipper clause" (a general statement that the contract expresses the full intent of the parties, thus relieving management of negotiating its decisions during the life of the contract) has generally failed to alleviate management's duty to negotiate specific decisions during the life of the contract. Because such clauses are frequently phrased in very general terms, arbitrators and third parties are likely to give more weight to the more specific contract clauses which define and limit management's ability to act. A recent Federal case provides a good example.

The employer sought to institute the requirement that an employee returning to work after 5 or more days of sick leave must receive a fitness for duty physical from the agency's physician. A provision of the contract stated:

Article XVI, Section 5:

> Normally, absences in excess of three (3) working days must be supported by a doctor's certificate. In certain instances, it may be unreasonable to require such a certificate. In such cases, a signed statement by the employee stating the nature of his incapacity and the reasons why a certificate was not obtained may be accepted in lieu of a certificate . . .

The union maintained that management was obligated to negotiate the desired change because the new requirement amended the contract provision, and, on a unilateral management action, created a new condition of employment. The union cited the following contract provisions:

Article III, Section 7:

> The Employer agrees that personnel policies which are within local discretionary authority will not be changed or implemented without prior negotiations with the Union when they are in conflict with this Agreement. (emphasis added)

Article V, Section 7:

> It is the right of the Union to negotiate with the Employer on matters of local discretion which may amend the provisions of this Agreement and to present its views to the Employer at any time on any matter . . . Formal amendments required to modify the provisions of this Agreement will be processed for approval consideration in the same manner for approval of this basic Agreement. (emphasis added)

Management, however, argued that the collective bargaining agreement was not altered by the proposed change and that the proposed change was not in conflict with the agreement. Management therefore maintained that its only duty was to consult (i.e., receive and consider union opinions) with the union. The following contract provision was cited:

Article III, Section 1:

> The Employer is obligated to consult with the union concerning personnel policies, the personnel implications of certain management decisions, and on matters directly affecting working conditions. (emphasis added)

The Assistant Secretary for Labor Management Relations ruled on the following points:

1. The proposed sick leave provision did not conflict with the agreement or change or take away rights granted by the agreement; the proposed change did, however, constitute a new term or condition of employment.
2. As to whether the agency was required to negotiate or consult on the issue, the Assistant Secretary found that Article III, Section 7, and Article V, Section 7, clearly showed that the union had not waived its right to negotiate with the Employer on amendments to the agreement or on the constitution of new terms and conditions of employment. The agency was therefore required to negotiate its proposed change with the union.

There are several significant points to be drawn from this case. Perhaps most important is that the duty to negotiate on matters appropriate to the scope of bargaining is inherent in the collective bargaining process. Management is relieved of the duty to negotiate only by a clear and unmistakeable waiver by the union. Private and Federal sector experience indicates that the only guarantee that the waiver will be upheld as clear and unmistakeable is if the waiver deals with a specific issue (e.g. "The union waives its right to negotiate, during the life of this contract, on changes in work assignments.").

The final point to be drawn from the case cited is that when the issue is within the scope of bargaining but not covered in the contract, management, nevertheless, has the duty to negotiate in good faith on the issue. This duty flows from the rights accorded to the union as exclusive representative.

The concept of good faith bargaining applies equally to management and to the union. Good faith, combined with the concept of exclusivity, is the cornerstone of constructive and stable labor-management relationships. Without good faith dealings, undesirable adversary relationships will quickly develop. Good faith, philosophically and practically, must permeate the day-to-day transaction of labor management relationships. Collective bargaining must be used as a process to channel and resolve conflict.

Brief outline of management's good faith responsibility:

Basic Principles

1. Obligation to meet at reasonable times and places to confer on a give-and-take basis on matters appropriate to the scope of bargaining.
2. Legally, the good faith obligation begins at the moment a union is recognized or certified as the exclusive bargaining agent for a unit of employees. Management must confer and negotiate on issues within the scope of bargaining.
3. The good faith requirement limits management's ability to deal directly with individual employees within the unit and with non-union groups is limited
   - All employees of the unit are bound by the nature of the exclusive relationship and by a negotiated contract. Therefore, in dealings with individual employees management may not make an adjustment on matters within the scope of bargainable subject matter that infringes on the union's right to negotiate such changes. If an employee within the bargaining unit does not choose the union to represent him in meetings with management, the union must be informed or allowed to be present when the employee and management adjust or change bargainable matters.
   - In dealing with non-union employee groups (minority groups, veterans groups, etc.), management may not negotiate anything that falls within the scope of bargaining. For example, such groups may be concerned with upward mobility or job enrichment; generally, these topics fall within the scope of bargaining. Although management may consider views of non-union groups, management must not negotiate with these groups. The good faith requirement also demands that, at a minimum, the union be informed of such meetings, and more appropriately be invited to be present at them.
4. Once a contract has been negotiated, the obligation to bargain in good faith continues as in the case of interim negotiations for the purpose of amending the contract. Management must also negotiate any

proposed action on matters within the scope of bargaining, even though the contract may be silent on the subject. As exclusive representative the union inherently has the right to bargain on all matters within the scope of bargaining; because a contract is silent on a subject within the scope of bargaining does not mean that the union has waived its right to bargain on the subject. Certainly, management must bargain any proposed action which in any way changes the terms of the contract.

BARGAINING PREPARATIONS

U. S. CIVIL SERVICE COMMISSION
LABOR RELATIONS TRAINING CENTER
WASHINGTON, D.C. 20415

BARGAINING PREPARATIONS

I. PREREQUISITES FOR SOUND BARGAINING

The establishment of a sound labor relations policy is a prerequisite to successful collective bargaining. This means that the management should give thought to its basic philosophy of relations with employees and their representatives. Its policy needs to be such as:

to provide a steady, ample, competent labor force, fairly and adequately paid

to permit management the flexibility it needs to manage efficiently

to preserve the interest of the public

to encourage employees, through effective communication, to identify with employer objectives.

These views will vary. Whether in writing or not, this basic philosophy should be well understood as the foundation of the employer's labor policy. Some important steps in preparing to bargain include:

A. Thorough study of the present contract (or the existing terms and conditions of employment in the case of a first contract) with a view to identifying sections that require modifications.
B. Close analysis of grievances in order to discover unworkable or poor contract language, or situations which are creating problems in supervisory-employee relationships.
C. Frequent conferences with line supervision for the dual purpose of improving the supervisor's knowledge of contract administration and obtaining information as to how the contract is working out in practice.
D. Review of current union agreements signed by typical and comparable governments, with the same or other unions.
E. Study of labor relations reporting services such as BNA, CCH, etc., and BLS reports on labor relations matters for the purpose of keeping abreast of recent developments that may affect future contract negotiations.
F. Collection and analysis of economic data on issues likely to be of importance in the next negotiations.
G. Study and analysis of arbitration decisions under the current contract with a view to formulating proposals for changed contract language at the next negotiations.

A periodic audit of the existing agreement should be made so that the negotiator may avoid the element of surprise during the actual negotiations. This audit should reveal contract violations and new practices which may have been instituted during the term of the contract, as well as any oral or written agreements which may have been reached which are in conflict with the contract or amend it in any way.

Determine the short- and long-range objective it intends to achieve in the course of negotiations. The short-range objective is to reach a fair, equitable and honorable settlement for the new contract term. Long-range objectives are more subtle and somewhat amorphous. Although it is an over-simplification, long-range objectives involve laying the industrial relations groundwork and developing contractual obligations which are tailored to best fit the future plans of the operating unit several labor contracts hence.

II. GATHERING THE INFORMATION

The management negotiator has the fundamental task of selecting and compiling adequate and pertinent data to assure himself that he will not be confronted with unexpected issues or demands, and that his decisions will be made on the basis of complete and accurate knowledge. It is necessary to prepare for reasonably foreseeable demands that may be made by the union. The gathering of information is a two-stage operation, each of equal importance:

A. Collecting throughout the year all information bearing on the internal experience in administering the contract, and upon its relationships with employees and their representatives. Around the calendar, reviewing labor publications and reports to keep abreast of bargaining demands made by the local union which represents the employees, as well as its international union and demands made by other unions on other employers in the field and the community.

B. As reopening date approaches, formulation of management's position with respect to all anticipated union demands; the preparation of its own demands; estimating the costs of expected proposals; marshaling arguments; and the compilation, verification and reduction to final form of facts and figures, both from internal and external sources, to support these positions and demands.

III. EVALUATING PAST CONTRACT EXPERIENCE

An audit of the contract should be made continuously during the year through the regular analysis of grievances and through information supplied by supervision and other personnel. Weak and faulty clauses should be identified, and case histories and statistics compiled to support any desired changes. The following is a checklist to use as a guide:

PAST CONTRACT CHECKLIST

A. Have grievances filed during the year been studied, classified and analyzed?
B. Does the grievance analysis indicate the number of grievances alleging violation of each contract clause?
C. Does the analysis show the number of grievances settled at each step of the grievance procedure?
D. Have you classified the number and type of grievances from each department or area?
E. Does the analysis include the cost to process and settle the grievances?
F. Does arbitration experience indicate the exact change that the decisions have made in the original contract intent?
G. Have arbitration awards been analyzed to indicate how each has invaded or altered policy?
H. Have arbitation decisions been analyzed to determine what changes are required in the existing contract?
I. Has there been an analysis of time and expense of union stewards acting on union business on government time?
J. Are full facts available concerning work stoppages or slowdowns, if any, during the year?
K. Have penalties been attached to employees' leaving the work area without permission so that sudden walkouts and wildcat strikes may be minimized?
L. Have charges of contract violations by employer or union been fully explored and documented?
M. Has the impact of make-work provisions, sleepers and restrictive clauses been evaluated, looking toward the possibility of elimination?
N. Have discussions during the past year with the union bargaining committee been reviewed and analyzed?
O. Are written reports submitted by all levels of management on all oral discussions with union representatives regarding interpretation of various contract clauses?
P. Have reports of all supervisory meetings on contract and personnel practices been reviewed for possible suggestions on contract changes?
Q. Are all levels of supervision required to report difficulties in operating under the existing agreement and to suggest remedies?
R. Have the supervisory comments been categorized and considered in the light of employer counter-proposals?

IV. EXAMINING PRIOR TECHNIQUES IN NEGOTIATIONS

The effectiveness of management strategy at the bargaining table can always be improved by an objective reappraisal of how previous negotiations were handled.

A. If the union obtained concessions on key issues, have these been evaluated and their impact listed with experience to date noted?
B. If initiative was taken away from the chief negotiator, have the reasons been explored and strategy weakness corrected?
C. Have tactics in meeting unexpected demands been reviewed and improved?
D. If exhibits or visual aids are to be used during negotiations, when and how they can be introduced most effectively?
E. If the accuracy of data or facts presented was challenged, have the sources been checked and controls set up to insure accuracy and clarity?
F. Have union committee attitude, techniques, strategy, and flexibility been analyzed, discussed and recorded for reference?
G. Where previous union negotiating demands conflicted with grievance settlements, is management prepared with examples to reveal union inconsistency?
H. If daily bulletins were released for employee information, did they achieve their purpose of keeping employees informed?

I. Have plans been made to improve channels for getting daily information to supervision, to dispel wild rumors and misstatements during negotiations?

J. Has a program been in progress to help union officials appreciate the mutual interests of employer, employee and union – and the economic facts of life?

V. COLLECTION OF BARGAINING DATA

The collection of appropriate data for collective bargaining is a vital step in the whole negotiating process. It accomplishes two objectives:

to gather the information essential to effective collective bargaining.

to assist management in maintaining and improving its relationships with employees through recognition of employees' needs and desires.

This additional data should be available:

A. Wages

During the usual negotiations a wage rate increase is quite often a major union objective. Preparation in this area should be complete and factual if an effective presentation is to be made. Have the following been compiled for a minimum of 12 months:

1. Average straight time hourly and weekly earnings in the bargaining unit?
2. Average gross hourly and weekly earnings in the bargaining unit?
3. A distribution or breakdown of the above by department, occupation, shift, and length of service?
4. Average premium pay per hour by job classification?
5. Average premium pay per hour per department?
6. Beginning rates for all classifications?
7. Are the same rates paid for the same job?
8. List of employees with "red circle" rates?
9. Job descriptions?
10. Job evaluation plan?
11. Employee merit rating plans?
12. Wage incentive plans?
13. Employee rate progression plans?
14. Comparisons of the wage structure – rates and earnings – with comparable jurisdictions and up-to-date figures for:
    a. Competitive employers?
    b. Community?
    c. Specific employers?
    d. Other government employers?
    e. Incomparable jobs in industry?
15. Lists of pertinent wage settlements:
    a. Competitve employers?
    b. Community?
    c. Other government employers?
    d. Incomparable jobs in industry?
16. Estimated cost of union's demands?
17. Estimated cost (or savings) of management's proposals?
18. Estimated cost of bargaining-unit wage increase as it will affect non-bargaining unit employees?
19. Cost of living data and comparison of increases vs. earnings?

B. Hours

Hours of work have been one of the chief sources of controversy in collective bargaining. In collecting data for contract negotiations, all available information concerning hours worked should be compiled for reference and presentation if necessary.

1. Have average weekly hours over the past year been figured?
2. Have the hours been averaged by:
    a. Bargaining unit?
    b. Department?
3. Have average weekly hours been compared with:
    a. Community?
    b. Competitive employers?
    c. Specific employers?
    d. Comparable jobs in industry?
4. Are the number of hours in a regularly scheduled workday and week indicated?
5. Have average hours worked daily been tabulated?
6. Shift data:
    a. Starting and quitting times of all shifts?
    b. Starting and quitting times of odd hour shifts listed separately?
    c. Listing of rotating shifts for maintenance occupations?

d. Number of employees per shift by:
Occupation?
Seniority?

7. Has overtime worked over the past year been analyzed by:
   a. Department?
   b. Classification?
   c. Distribution among employees?
   d. Refusal of overtime?

C. Employees

Statistical data concerning employees is of utmost necessity at the bargaining table. Again, the data must be accurate and complete.

1. Has the information indicating the number of employees in the bargaining unit been tabulated as follows:
   a. Total in bargaining unit?
   b. Total in each department?
   By shift?
   By length of service?
   By age distribution?
   By regular or temporary?
2. Have future manpower requirements, by classification, been estimated?
3. Has the number laid off by date, department and classification been tabulated?
4. Is the number recalled also listed by date, department and classification?
5. Does the turnover data list
   a. Hires?
   b. Discharges, by reason?
   c. Quits, by reason?
6. Total number of promotions, demotions and transfers?
7. Number of employees on leave:
   a. Personal?
   b. By department?
   c. By special groups?
   d. By union office? (stewards, committeemen, etc.)
8. Number of union officials (in each union in plant):
   a. Total?
   b. By union office?
9. Wages paid for time spent on union activity?
   a. Total?
   b. By department?
   c. By union office?

D. Fringes

Fringes have become as important as wages in negotiations. As much data as possible should be gathered, not only with respect to the fringes which the employer pays but all other fringes paid in the area and in competitive industry. In general, most fringes can be classified as premium payments for time worked, such as overtime premiums. However, fringes may also include payments for time off, payments for health and security benefits, payments for employee services, and the cost of miscellaneous items such as recognition of length of service, contest and suggestion awards, educational payments, parking lots, social meetings, etc. etc.

Computing fringes in terms of cost total and in cents per hour actually worked is an extremely effective way to compare over-all practices – since the details may vary from unit to unit. But in collecting this information, it is vital that costs be computed in all jurisdictions on the same basis – otherwise the comparisons become invalid and hazardous.

1. For easy handling, have separate sheets been prepared describing the position the employer will take with regard to:
   a. Premium pay?
   b. Shift differentials?
   c. Rest periods?
   d. Holidays?
   e. Regular vacations?
   f. Extended vacations?
   g. Sick leave?
   h. Military leave pay?
   i. Jury duty?
   j. Group insurance plans?
   k. Pension plans?
   l. Termination pay?
   m. Supplemental unemployment benefits?
   n. Others?
2. Have cost surveys been made indicating:
   a. Cents per hour per employee per benefit?
   b. Total costs?
   c. Average cost per employee per year?
   d. Percentage of payroll?
   e. Percentage of total labor costs?
3. Have comparisons been made with:
   a. Community?

b. Competitive employer?
c. Specific employer practices?

4. Has the cost of union demands been computed?
5. Has the cost (or savings) of employer proposals been computed?

E. Financial and Productivity Data

Whenever management pleads inability to pay, this will mean exposure of its books on wages, labor costs and perhaps profits. If an employer says during the course of negotiations, "Competitively, I cannot grant the request," this statement could mean that the books and other pertinent data should be opened. It has been held proper, however, for an employer to argue that "We need more money for our other operations." In such a case, the employer would not be required to open the books. If increased productivity is used as the basis for the union's wage demands, information must be available to support the employer's position. In any event, the employer must be prepared to support its position by presenting factual information.

1. Are production per man-hour figures available? (where product produced)
2. Have labor costs been indicated?
3. Does data include past trends in costs?
4. Have future projections of costs been charted?

F. Other Contracts

It is vital for the employer to secure copies of current union agreements signed by typical and comparable employers in the community and the field.

G. Miscellaneous Information

Additional information of importance to the negotiator should be available for quick reference if necessary.

1. Texts and bulletins of:
   a. Labor-Management Relations Act where applicable
   b. Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act)
   c. Fair Labor Standards Act
   d. Walsh-Healey Public Contracts Act
   e. Selective Service Act
   f. Welfare and Pension Plans Disclosure Act
   g. Civil Rights Act
   h. Equal Pay Act
   i. President's Executive Order No. 11491 and subsequent Orders
   j. Pertinent state laws
2. Costs of union activities – strikes, slowdowns, grievances, etc.
3. Seniority lists
4. Reports to the public and employees
5. Copies of the pension, group insurance and other employee benefits programs
6. Copies of the employer personnel practices and procedures
7. Employee handbook
8. Description of employee services – –medical, safety, credit union, recreation programs, communications, cafeteria, etc.
9. Union constitution and by-laws

VI. FORMULATION OF EMPLOYER PROPOSALS AND PROTECTION OF THE MANAGEMENT FUNCTION

A positive approach to collective bargaining requires management to take an affirmative attitude with realistic proposals of its own, dealing in facts – taking the initiative – paving the way for a sound contractual agreement. Protection of management's authority to operate all facets of its business efficiently is sometimes safeguarded through a carefully-worded management rights clause – sometimes through other devices. In any event, the contract must make it crystal clear that management retains the authority and flexibility necessary to effective direction of the enterprise.

1. More specifically, does the contract make clear the right to:
   a. Determine the size and composition of the work force?
   b. Control the type of mission?
   c. Control the volume of work and the scheduling of operations?
   d. Designate the place of work?
   e. Sub-contract?
   f. Maintain discipline at the work site?
   g. Effect transfers, promotions, and demotions necessary to efficient operation?

h. Limit union activity on government property and time?
i. Eliminate interruptions to work?
j. Determine the number of employees on a job?
k. Determine job content?
l. Set level or quality of work performance?
m. Select and assign new employees and new supervisors, etc.

2. When formulating proposals, have other contracts signed by the union in the area been examined?
3. Have proposals been discussed with:
   a. Top executives?
   b. Supervisors and foremen?
4. Can the position stand the scrutiny of public opinion?

VII. THE MANAGEMENT NEGOTIATING TEAM

A management which recognizes the importance of the issues involved in collective bargaining will select a chief negotiator who has prestige in the eyes of both management and union representatives. He should be a man who carries enough weight within the organization to have frank discussions with the top executive concerning any position which he believes to be untenable, undesirable, or contrary to management's best interests. Normally, the management negotiator should not bargain alone. Like the union spokesman, he should be supported by a negotiating team. The use of a committee permits representatives of various departments to participate in the negotiations. They also can assist the chief negotiator in areas with which he is not completely familiar.

1. Has the choice of the individual responsible for negotiating a contract been carefully weighed on the basis of his:
   a. Availability
      If he is an outside man, has he arranged his other interests so full time can be devoted to the negotiations?
      If he is an executive, have his affairs been so arranged that interruptions due to other responsibilities are held to the barest minimum?
   b. Experience and background
      Does he have a practical working knowledge of labor relations and applicable federal and state laws?
      Is he completely familiar with the management organization, employee policies and practices, actual conditions?
      Is he completely familiar with the provisions of the present labor agreement and the history of its development?
2. Has full consideration been given to the contribution which might be made by:
   a. Outside specialists (including legal counsel, labor relations consultants?)
   b. Employers' associations?
   c. A management negotiating committee?
   d. Local people (in case you are having the local office conduct negotiations in local areas)?
   e. The Federal Mediation & Conciliation Service? (Employers should understand that certain states provide state mediators. In a majority of cases, the employer has a choice of seeking assistance from either federal or state mediators.) Mediators can only assist the parties in attempting to arrive at a settlement and in no case do they have power to recommend or force a settlement on the parties.

VIII. VISUAL AIDS

There is a growing tendency to use charts in presenting negotiating data in the form of bar, line and pie graphs. Carefully planned visual exhibits are often more effective in explaining the reasons for management's position than the best oral explanations.

1. Has management data been completed in the most simple and usable form by the use of:
   a. Charts?
   b. Graphs?
   c. Statistics?
   d. Loose leaf, indexed books?
2. Is each chart simple and uncomplicated?
3. Does each chart or graph present only one fact or trend?
4. Are the charts based on unimpeachable data?
5. Have charts been prepared showing comparisons betwen the employer and the prevailing levels in the community, in industry, and with individual "pattern-makers" for:

a. Average straight-time earnings?
b. Average weekly earnings?
c. Take-home pay?
d. General wage increases granted by the employer over a period of years and those granted by others in the community and field?

6. Have wages and wage increases and changes for both current and past years been charted?
7. Have charts been prepared comparing the wage increases granted by the employer as compared with increases in the cost of living index?
8. Are charts and visual aids attractively prepared and indexed for efficient presentation?

IX. FINAL PREPARATIONS

As the date for reopening approaches, the last stages of preparation call for organizing all the data, establishment of the employer's final position, and other important considerations.

1. Has the employer been properly notified by the union prior to contract termination, as required?
2. Has it been decided which facts will be presented and in what order?
3. Has the employer's "final" position been determined?
4. Has consideration been given to the advantages of holding negotiations in a neutral location as against holding meetings on employer property?
5. Have employer officials decided whether union negotiations should be paid by the employer?
6. Does management have a copy of the union's specific demands?
7. Are records to be kept of the progress of negotiations?
8. Has the final meeting with the employer negotiating committee been called to:
   a. Clearly set forth the area of authority of the chief negotiator?
   b. Arrange for him to have ready access to a higher authority if the need arises?
   c. Re-emphasize that the chief negotiator will be the only spokesman authorized to make commitments?
   d. Review employer presentation procedure?
   e. Decide whether some of the committee will rotate?
   f. Clarify any doubt and answer any questions?
9. Are the above considerations based on a positive and detailed bargaining program aimed at definite labor relations objectives?

ANALYSIS FOR CREATIVE BARGAINING - CONTRACT CLAUSES

Success in bargaining requires:

Thoughtful preparation for bargaining

Sound contract proposals

A positive approach to collective bargaining involving good faith and a desire to reach an agreement.

Unions, in the collective bargaining process, usually want to protect their strength as organizations. They are interested in more members, union security, strong treasuries and in many cases want to exercise control over jobs. Sometimes they would like to limit management's power in hiring, firing, promoting, demoting, disciplining, etc.

Management, however, has somewhat of a different and more difficult problem. Its aims in collective bargaining are partly defensive. There are things to be avoided, as well as certain gains to be achieved.

Since there are a wide variety of management and union approaches to bargaining, no rigid formula for negotiations can be set forth. It is possible, however, to explore fundamental questions that arise during the course of negotiations relating to major clauses in the agreement, whether the employer is negotiating a union agreement for the first time or renegotiating an existing agreement.

A. Preamble

Some authorities prefer that the language covering the Preamble simply include the date and description of the parties. Check the following:

1. Is the agreement between the international union and the employer, or the local union and the employer?

2. Shall you identify the parties to the agreement --international, local, officers, in order to fix responsibility for carrying out the terms of the agreement?

   It is suggested that "harmony" clauses be avoided (i.e., such phrases as "settle all differences without disturbing the peace," "establish mutual and economic relationship," etc.).

B. Recognition

The Recognition Clause follows the Preamble and it recognizes the exclusive bargaining rights of the union. It also defines the membership of the bargaining unit, answering such questions as:

1. Shall a general statement of coverage by department or craft be made, or shall a complete list of jobs be included in the bargaining unit?
2. Shall reference be made to the certification, if applicable, under which the union obtained its legal recognition?

C. Union Security

There are several forms of union security. The Taft-Hartley Act bans closed shop contracts between unions and employers engaged in interstate commerce, but since 1951 has contained no other limitation on the negotiation of union security clauses. The legality of other types of union security clauses varies from state to state and in the Federal Government.

Open Shop Clause

1. Shall the union be permitted to conduct its activities or business on the work premises during working hours?
2. Shall the union activities or business permitted be defined?
3. Shall provision be made that these activities must not interfere with efficient operations or the work of employees on the job?
4. What penalty shall be provided in the event there is a violation of this clause?
5. Shall the clause specifically prohibit the union and its members from using coercion or force in order to get non-members to join? (The laws prohibit such activities.)

Union Shop Clause

1. Does the clause provide for new employees to be given at least 30 days after start of employment before joining the union?
2. If you operate in more than one location, does the clause limit itself to the operations involved?
3. Have you defined the term "must remain a member in good standing" to mean the payment of union dues and initiation fees only?

Maintenance of Membership Clause

1. Shall you include an escape period so that members may withdraw from the union at the end of the contract term?
2. Shall provision be made as to what method of notification of withdrawal is to be used?

Collection of Union Dues – Some forms of union security include a check-off provision. A checkoff clause is limited to the payroll deduction for union dues and initiation fees as authorized in writing by the employee.

1. Does the form used to authorize deduction for dues conform with the requirements of the law?
2. Shall the union furnish the employer with a list of employees for whom it must make deductions?
3. How frequently shall the list be furnished, and how are additions to the list to be handled?
4. Shall a specific amount of money be established as the deduction? Shall a provision be included which states the maximum amount to be checked off per employee?
5. Shall the employer be required to furnish a list of employees and the amounts deducted to the union?
6. Shall an indemnity provision be negotiated to protect the employer against unwarranted claims and suits?

7. Shall the checkoff be revocable (i.e., withdrawn at any time the employee requests same), or if irrevocable, shall the employer allow automatic renewal of the authorization? Legally, a checkoff authorization cannot be irrevocable for more than one year or the termination of the agreement, whichever occurs sooner.
8. Shall the cost of administering the checkoff be borne by the employer, by the union, or by both parties?
9. In case there is no checkoff provision in the agreement, how shall the union be required to make its collections of money due from its members?
   a. During working hours? -- after working hours? -- during rest periods? -- meal periods? -- or should the employer provide facilities such as a booth, for this purpose?

D. Management Rights

There are certain exclusive rights that management possesses which do not flow from a collective bargaining relationship. Management is responsible for organizing, arranging, and directing the various components of the operation in order to run the enterprise efficiently. In the absence of collective bargaining agreements, management is free to direct its operation at its own discretion. Management rights cover those rights affecting the employer-employee relationship through the collective bargaining process.

Over the years, management has taken two different approaches to the issue of protecting its "right." The first approach is to avoid any management rights clause in a contract on the theory that certain rights are inherent in management. Proponents of this approach contend that management retains all powers, rights and privileges not specifically given away or restricted by the labor agreement.

The second approach emphasizes the multiple obligations of management, namely, to the public and to its employees. In fulfilling its obligations to the employees represented by a union, management should include a management rights clause in the labor agreement in order to establish in clear terms the scope of management's action which is to remain free despite its contractual obligations. Proponents of the second approach differ between those who suggest that a broader statement of managerial rights be included in the labor agreement and those who advocate a detailed statement of management rights. Careful consideration should be given to this subject before deciding upon a suitable course of action. If assistance is required, advice should be obtained from legal counsel or other competent labor relations sources.

In the final analysis, management interests can be protected more fully by exploring some of the following questions:

1. Shall the employer include a provision enabling it to protect its rights to introduce new and improved methods?
2. Shall it have the right to determine the size of the work force, the assignment or transfer of work, the scheduling of operations, determination of job content, the right to require employees to work a reasonable amount of overtime, etc.?

Management cannot blame labor unions alone for the loss of certain management rights. If a specific list of rights is included in the agreement, the employer should also decide whether a comprehensive clause covering rights not specified in the agreement is desirable.

E. Hours of Work and Overtime

1. Is the workday and the workweek defined? If so, what constitutes a workday? What constitutes a workweek? When does it begin? When does it end?
2. Are the actual working hours specified, or is this left to management's decision?
3. Are there restrictions on changing established work schedules, individual schedules, department schedules, or crew schedules?
4. Is there a guarantee of minimum number of hours per day or per week? If so, how many?
5. If an employee is unable to work, is there a clear understanding as to what he should do in order to be excused from work?
   a. Should he call the employer and contact someone in authority and obtain an excuse?

b. What proof to substantiate illness is required?
c. What happens if a man fails to report and does not notify the employer?

Overtime

1. What shall be considered as overtime?
   a. Time worked outside the regularly scheduled hours, daily, weekly?
   b. Time worked on Saturdays, Sundays or 6th and 7th day of the workweek schedule?
2. How shall overtime be calculated?
   a. At time and one-half? Double-time?
3. Shall the employer pay time and one-half for Saturday as such, and double time for Sunday as such?
4. Is overtime computed on a shift basis, or a calendar-day basis?
5. Shall provision be made for the distribution of overtime?
   a. Defined "equitably" and "equally as practical"? by classification? by department?
   b. It is necessary to cross shifts and/or departments in order to equalize overtime?
6. With respect to equalization of overtime:
   a. What provision covers the matter of errors in overtime distribution?
   b. Is it necessary to reimburse the employee for not working in the event an error in overtime assignment is made by management?
   c. Does the agreement permit management, where errors are made, to provide makeup work in lieu of pay for not working?
7. Shall employees be required to work overtime?
   a. What discipline and action should be taken if employees refuse to work overtime?
8. Is advance notice of overtime work required? If so, how much?
9. If overtime is worked, shall provision be made for meal period?
   a. If so, is it necessary to work a specified number of hours before the meal period is taken?
   b. What provision, if any, should be made for pay in lieu of a meal period?
10. Overtime provisions should contain a clause eliminating the necessity of pyramiding overtime pay.

F. Holidays

1. How many holidays shall be observed, and are they identified?
2. What provision is made for a holiday which occurs during an employee's vacation?
3. How much shall employees be paid for holidays worked, as well as for holidays not worked?
4. Should a requirement that the employee work the day before and the day after a holiday be contained in the agreement?
5. What happens if a holiday falls on a Saturday? Sunday?
6. Is there a requirement that an employee must work, if requested, on a paid holiday or forfeit holiday pay?
7. Does a paid holiday apply to all employees?
   a. Full time, permanent employees? Seasonal and temporary employees?
8. If an employee is on a leave of absence, will he receive holiday pay?
9. What limitations should be placed on holiday pay for employees who are not actively at work at the time?
10. What premiums should be included in computing holiday pay?
    a. Shift differential or other premiums?

G. Grievance Procedure

Make sure that the grievance procedure is workable and that a grievance is defined. The procedure should be kept simple.

1. How may steps should be followed in the grievance procedure? Who are the parties involved?
2. How much time is allowed for the processing of grievances?
3. Are there time limits between the steps involved in the procedure?
4. Are formal grievances limited to alleged violations of the specific terms of the contract?
5. Shall a grievance be considered settled if not appealed to the higher step or level within the established time limit?
6. Shall grievances be presented in written form? If so, how many copies should be made? At what step of the grievance procedure is the grievance reduced to writing? What information should appear on the

grievance form? For example: name and signature of aggrieved employee, department, nature of grievance, disposition.

7. What is the composition of the grievance committee, and how many members should be on the committee?
8. Shall union representatives have the right to investigate grievances on management time?
9. Is it made clear that arbitration is the terminal point of the grievance procedure? If it is the first union contract, are all grievances prior to the signing of the contract considered withdrawn?
10. Shall union representatives be paid for the time spent in handling grievances? Is there a limitation on the number of hours involved in processing grievances?
11. Should the employer pay grievance committeemen straight time wages only, or is overtime involved?
12. Should the clause be limited to provide for payment to union representatives for grievance meetings called by the employer, or for handling all grievances during working hours?
13. Should provision be made preventing union committeemen or stewards from spending excessive time on grievances or interfering with operations in the processing of grievances?
14. Should the union steward or grievanceman obtain permission from his supervisor before leaving his work area to investigate a grievance?

Arbitration

Arbitration is the terminal point of the grievance procedure and should be limited to interpretation and specific application of the agreement. Often it is included in the grievance section of the agreement. It is important that an arbitration clause specify the arbitrator's authority. Most grievance arbitration in this country is handled by a single arbitrator. However, in some relationships, the use of tripartite boards of arbitration is desirable.

1. Does your agreement specifically preclude the submission of multiple grievances to arbitration?
2. Does your contract clause prevent the arbitrator's decision from adding to, subtracting from, or amending the agreement between the parties?
3. Does the clause provide for a time limit for rendering an award, especially in cases where back pay is involved?
4. How is the arbitrator selected? Jointly, from an impartial panel furnished by the U.S. Federal Mediation and Conciliation Service, the American Arbitration Association?
5. How is the cost of arbitration divided? Shared equally? Loser pays?
6. Is the arbitrator's authority limited to rendering a decision on the grievance issue which is final and binding on both parties?
7. Is a transcript necessary during the arbitration proceeding? If so, is the cost shared, or is it paid by the party ordering same?
8. Shall the parties set forth the issues to be arbitrated in advance of the hearing, or shall the grievance as submitted determine the issue to be arbitrated?
   a. Failing to agree upon an issue, should the arbitrator, upon hearing statements from both sides, frame the issue?
9. Should the parties agree to have the case published if requested by the arbitrator?

H. Strikes and Lockouts

A sound no-strike clause helps to develop mutual and responsible relationships between the employer and the union.

1. Shall the employer have the right to discipline employees who violate the no-strike clause?
2. Does the clause require union officers, committeemen, and shop stewards to take affirmative action in order to prevent employees from continuing participation in a wildcat strike? If so, are there specified time limits for the matter to be brought to a conclusion?
3. Does the clause prevent work stoppages, slowdowns in operations or other interference with operations?
4. Does the employer agree that it will not lock out employees during the term of the agreement?

I. Seniority

The seniority provisions in any agreement are important. Improperly written seniority clauses can place severe restrictions on employer operations and can prevent management from

maintaining an efficient work force. There are several types of seniority clauses – agency-wide, departmental, classification or occupation. In some cases a combination of these types of seniority plans is in effect.

1. Does the agreement define seniority?
2. Is there a distinction between the application of seniority during layoffs and when promotions occur?
3. How shall seniority be used?
4. How is seniority distinguished from ability?
5. Is superseniority permitted? That is, are the officers of the union covered so that in the event of layoff they are not affected?
6. Does seniority apply retroactively after an employee satisfactorily completes his probationary period?
7. If a layoff occurs, does the clause require advance notice of the layoff?
8. If an unforeseen emergency develops, or in the event of a short-term dislocation, can layoffs be accomplished without regard to seniority for a specified period?
9. Can an employee about to be laid off utilize his seniority to obtain a promotional opportunity?
10. How long should employees who are laid off retain seniority (i.e., recall rights)?
11. Will excuses be accepted if justified when a recalled employee reports late for work?
12. What type of notice should be used when recalling a laid-off employee?
13. Should employees be allowed to accumulate seniority during periods when they are not working?
    a. Layoff periods? Seasonal fluctuations? During periods of approved leave of absence?
14. How is seniority lost?
    a. Discharge? Resignation? Layoffs exceeding a specified period? Failure to report for work without notification to the employer?
15. Should skilled employees receive special seniority rights over other employees?
16. If an employee is upgraded to a salaried position, how long is his seniority protected?
17. Should temporary or seasonal employees be entitled to seniority?
    a. By the employer?
    b. Shall they be posted?
    c. Sent to the union?
    d. How frequently should these lists be revised?
19. In promotions, is seniority the only factor for determining a promotion?
20. Is the term "promotion" defined to mean movement to a higher paying job?
21. Are promotional opportunities subject to bidding requirements? If so, how long must the job be posted?
22. Are there other factors to be considered, such as experience, training, or physical fitness?
23. Does the employer have the right to test employees seeking promotional opportunities?
24. Does the contract distinguish between a permanent and temporary vacancy?
25. If a temporary vacancy becomes permanent, is there a clause covering the condition?
26. If ability is a determining factor in making a job award, is ability defined to include a reasonable amount of training to perform the job?
27. Is a trial period allowed for the purpose of determining the ability factor?
28. How is an employee who demonstrates lack of ability removed from the job – i.e., may he return to his old job without loss of seniority, or must he accept whatever jobs are available?
29. If jobs cannot be filled with members of the bargaining unit, does management reserve the right to hire from the outside in order to fill the vacancy?

J. Vacations

The vacation provision contained in an agreement should define eligibility requirements and establish a basis of computation.

1. Is vacation eligibility defined as continuous service or on the basis of accredited service? (Accredited service means that credit will be allowed for working a certain number of hours in a week or month, after which full credit may be given toward vacation benefits.)
2. How much vacation shall be allowed?
    a. Number of days?

b. Is it a pro-rated amount?
c. Is there an eligibility requirement before employees can obtain the initial vacation?

3. How is vacation pay determined?
   a. Specific number of hours at straight time pay?
   b. Average hourly rate for a certain period?
   c. Percentage of previous year's earnings for a stated period?
4. Shall vacations be based upon the number of hours worked in the week?
5. Shall provision be made for payment of employees in lieu of receiving vacations? Should employees actually be required to take time off for vacations?
6. What period shall be used for establishing the taking of vacations?
   a. The entire year? Specified months? Summer months? Split vacations?
7. Shall the employer provide a shutdown of operations during the vacation period?
8. If employees have the right to select a vacation period, does management reserve the right to change the schedule because of operational requirements?
9. Does the vacation period count as time worked?
10. What provision is made in the event an employee quits or if he is discharged?
11. Is provision made for allowing employees to be considered for new jobs while they are on vacation?
12. Can the employer limit the number of employees on vacation at the same time?
13. If an employee receives more than one week of vacation, must the employee take all the weeks at one time or can it be divided?

K. Jury Duty

Many employers agree that they will make up the difference in pay only between the employee's regular pay and the money he receives for serving as a juror.

1. Should provision be made that all fees paid for service on a jury be verified by a court official?
2. If fees for mileage are allowed, shall this be considered as part of jury pay?

L. Union Bulletin Boards

1. Shall the union be permitted to post notices on the company bulletin board?
2. Shall such union notices be restricted to
   a. Social affairs? Union elections? Union meetings? Joint employer union information?
3. Shall management require a copy of what is to be posted in advance of posting?
4. How many bulletin boards should be designated for union use?
5. Should the posting of propaganda or political statements be prohibited?

M. Leave of Absence

Generally, leaves of absence for personal reasons are limited to a certain number of days. However, union officers and officials are often granted leaves in order to attend union conventions.

1. Does management have the right to determine whether or not a personal leave should be granted?
2. Does the leave of absence request have to be in writing?
3. Is there a limitation on the number of days allowed whenever a personal leave is granted?
4. Shall the employee be considered as having quit if he fails to report for work at the end of an approved leave of absence?
5. If the employee obtains employment elsewhere while on leave, is he automatically terminated?
6. What procedure is to be followed in the event an employee wishes to return early?
7. Is an employee's coverage under the employer's benefit programs continued while the employee is on leave? If so, on what basis?

N. Death in Family

Pay for absence due to death in the family is incorporated in an increasing number of agreements.

1. How much time off with pay is allowed in the event of a death in the family?
2. Are the days calendar days or working days?
3. What is meant by "death in the immediate family?" Wife, husband, children, parents, brothers, sisters, others?
4. Should coverage of the clause be limited to employees who actually participate in arrangements or attend the funeral?
5. Shall the employee be required to submit evidence of the death in the family? If so, what form of evidence is required?
6. Are probationary employees allowed time off with pay in the event death occurs in their family?
7. Does the agreement specify when time off with pay may be taken (i.e., through date of interment, within specified period following death, etc.)

O. Wages

1. Does your clause permit management to establish new job classifications?
2. Does management reserve the right to combine or eliminate jobs?
3. In the event there is a dispute over a new job because of a technological change or an increase in job content, does the clause restrict discussions to the wage rate exclusively and exclude discussions as to crew size, seniority, etc.
4. Does management reserve the right to install an incentive plan or make changes in existing incentive plans?
5. Should all the job rates and classifications be listed in the agreement?
6. What provision is made for an employee who wishes to change jobs?
7. What provisions are made for employees who are requested by the employer to change jobs?
8. Shall the wage structure provide for single rated jobs or rate range schedules?
   a. If rate ranges are involved, what method is established for progressing through the range?
9. Are special premiums included for shift work?
10. In the event management changes an employee from one shift to another shift, is a special premium allowed in the absence of notice?

Job Evaluation

1. If job evaluation is used, is reference made to the subject in the agreement?
2. Is there a provision for training union officials in the use of the job evaluation plan?
3. Is management prevented from establishing a job evaluation program if one is deemed advisable?

Wage Reopener

Occasionally, where a contract term is for two years or more, a provision for reopening on the matter of wages only is included.

1. If the contract has such a provision, does it state how much notice must be given of intention to reopen the agreement?
2. Does the provision specifically list the reasons for which reopening may be asked?
3. Does the provision cover only the questions of wages, or can fringe benefits or classification increases be considered?

Cost of Living

Inflationary pressures can bring demands for cost-of-living clauses.

1. In the event there is a cost-of-living provision in the agreement, does it tie wage adjustments to the Consumer Price Index issued monthly by the Bureau of Labor Statistics (BLS), U.S. Department of Labor?
2. Does it limit the cost-of-living adjustments to a change in the BLS index of at least 0.5 points?
3. Are cost-of-living adjustments frozen into the base rates for the job classifications? (Often cost-of-living adjustments are paid in addition to the base rate for the job and are not included in the base rates.)
4. Is provision made for downward adjustments in the cost-of-living?
5. Is there a maximum established beyond which cost-of-living increases will not be made during the term of the contract?

Report Pay

1. Is a guaranteed number of hours' pay allowed to an employee who reports for work that is scheduled but not available?
2. What is the number of hours allowed for reporting pay guarantee?
3. Does management have a right to put employees to work outside their regular classifications, in lieu of reporting pay?
4. Is reporting pay waived if the employer makes an effort to notify employees not to report for work within a reasonable period in advance of the reporting hour?
5. Is reporting pay provision waived in the event there are conditions beyond the control of management, such as equipment failure, act of God, etc.?
6. Are reporting hours paid for but not worked, counted toward overtime computations?

Call-In-Pay

1. Is the contract clear as to the distinction between call-in pay and reporting pay?
2. Does call-in pay apply only to employees recalled after completing their shift?
3. How many hours or how much call-in pay is guaranteed in the provision?
4. Must an employee remain at work a minimum number of hours in order to qualify for call-in pay?
5. If the call-in involves a full day's work rather than emergency, is the employee paid at a premium rate, and if so, for how many hours?

P. Rest Periods and Wash-up Time

Although rest periods and wash-up times are considered fringe benefits they can become expensive if the provisions covering these benefits are ambiguous.

1. If clauses covering these conditions exist, are there time limitations set forth in the agreement?
2. In the event relief periods or wash-up times times are abused, does the language of the agreement permit management to take remedial action?

Q. Discipline and Discharge

1. Does the agreement reserve to management the right to discipline and discharge employees for just cause? If so, is "just cause" defined to include
   a. Any violation of the agreement?
   b. Any violation of the employer's rules and regulations?
2. Does the contract distinguish between serious offenses which are cause for immediate discharge as opposed to lesser offenses which do not justify discharge but may require some form of disciplinary action?
3. Is a written warning provision contained in the agreement?
4. Does the agreement contain a clause making it mandatory that management notify the union in writing before taking disciplinary action?
5. Do all grievances concerning discipline have to be reduced to writing within a specified period?
6. Does the agreement specify that if an employee is reinstated with back pay, the monies received, either through working elsewhere or through unemployment compensation, can be deducted from the amount owed the employee by the employer?

R. Working Supervisors

1. Does the agreement contain an absolute prohibition on the work a foreman or supervisor can do?
2. Does the agreement permit the foreman or supervisor to work in cases of
   a. Emergency?
   b. Instruction and training of employees?
   c. Testing materials and production?

S. Contracting Out (Sub-contracting)

1. Does the agreement allow management to contract out work, and if so, under what conditions?
   a. Must the employer buy or lease equipment not in his possession?
   b. Must he train people with skills that are not readily available?
   c. Must he utilize employees who are laid off whenever practical?

d. Does the time for completion of the job affect the decision as to whether employees might be utilized in the work versus having the work contracted out?

T. Safety and Health

Many agreements contain provisions for safety and health.

1. What is the composition of the Safety Committee?
   a. Is the union represented? (If so, what is its function?)
2. How often does the committee meet?
3. Does the committee have authority to correct unsafe acts, or does the committee act in an advisory capacity?
4. Does the committee make periodic inspections of the working facilities?
5. If the union is represented on the committee, does the employer pay for time spent in safety meetings?
6. Is there a provision which states that a member of the grievance committee cannot also serve as a member of the Safety Committee?
7. Does the provision require that all safety equipment be used by the employees?
8. Does the provision pledge the union to promote in every possible way a program for preventing accidents?
9. Should accident investigation reports be supplied to the union?

U. Injury on the Job

1. Does the agreement cover injuries in the facility?
   a. If an employee is injured and is unable to work, will he be paid for eight hours' work?
   b. If a doctor determines the employee can work and he doesn't work, is the employee paid only for the hours actually worked?
   c. Is it a contractual provision that all injuries must be reported whenever they occur?

V. Sick Leave Pay

Often unions will demand sick leave pay during the course of negotiations, and there are some contracts which include this benefit.

1. Is paid sick leave to be granted in addition to weekly disability benefits available under the employer's insurance program, if any?
2. How much sick pay does the employee receive for each day he is on sick leave, and how is the amount determined?
3. What is the maximum number of paid sick days allowed each year?
4. Is there a waiting period before paid sick leave is granted?
5. Is sick leave cumulative from year to year? If not, is there a provision allowing the employee to receive pay in lieu of the unused portion of sick leave?
6. Is the employee required to furnish proof of disability in order to qualify for sick leave beneftis?

W. Duration

The important issue in reviewing the term of the agreement is how long it runs and how it can be renewed.

X. Termination

(The Taft-Hartley Act devotes considerable attention to the procedures for the renegotiation or the termination of existing collective bargaining agreements. The Act specifically directs certain procedural requirements to be followed by both management and the union.

In order to comply with these regulations, termination language requires that the party desiring to terminate or make changes in an existing agreement must serve notice of such intention on the other party not less than sixty days prior to the expiration date of the present agreement. Negotiation as to termination of the agreement or proposed changes must commence promptly and, if agreement has not been reached by thirty days prior to the expiration date, the law imposes an obligation to notify the Federal Mediation and Conciliation Service of the existence of an unresolved dispute. Resort to economic force during the sixty days prior to the expiration of

the agreement is prohibited, and if a strike takes place the strikers are subject to discharge without recourse. An appropriate provision should be inserted in a contract setting out the procedure to be followed by the parties on termination.

COSTING OUT COLLECTIVE BARGAINING PROPOSALS

1. Direct Wage Increases

   a. Across-the-board

   The cents per hour cost of an across-the-board increase is self evident, i.e., a 10¢ an hour increase costs 10¢ an hour.

   The annual cost of an across-the-board increase is obtained by multiplying the increase by hours worked. For instance, a 10¢ an hour increase for a group of 100 workers, assuming a 40 hour week, would cost $20,800.

   b. Range of rate increases

   Where there is a range of wage increases each increase must be multiplied by the hours worked, a total must be derived and the average cents per hour increase determined by dividing the total annual cost by total hours worked.

   Assuming that 50 workers received a 7¢ an hour increase, 25 received an 8¢ an hour increase and 25 received an eleven cent an hour increase, the computations required are as follows:

Increase	x	Number of Workers	x	Hours Worked	=	Annual Cost
7¢		50		2080		$7,280
8¢		25		2080		4,160
11¢		25		2080		5,720
						$17,160

$$\text{Average hourly cost} = \frac{\text{Total annual cost}}{\text{Total hours}} = \frac{17,160}{208,000} = 8.25¢$$

   c. Percentage increase

   Before the cents per hour cost of a percentage increase can be determined, it is necessary to compute average straight time hourly earnings (ASTHE).

   Here is an example of how ASTHE is determined:

Rate	x	Numbers in Classification	=	Hourly earnings in classification
2.50		6		15.00
2.75		15		41.25
2.80		5		14.00
	Total	26		70.25

$$\frac{\text{Total hourly earnings in classification}}{\text{number in classification}} = \text{ASTHE}$$

$$\frac{70.25}{26} = 2.70$$

A 5% increase, where ASTHE equals $2.70, would cost 13.5¢.

2. Fringe Benefits

   A "fringe benefit" is a payment received by a worker in addition to wages, the cost of which is paid by the employer.

   Examples of fringe benefits are: paid holidays, paid vacations, sick leave, pension plans, life insurance, health and welfare plans, contributions to workmen's compensation, unemployment insurance and social security, and many similar so-called "monetary" items.

   Fringe benefits are part of an employer's labor costs and have money value to the worker receiving them.

   It is important that a negotiator be able to place a price tag on a fringe item in order to know exactly what the benefit is worth to his membership as part of the overall settlement.

   There are three main ways to express the value of a fringe item:

1. Total annual cost of a fringe item
2. Cost in cents per hour
3. Cost per employee

The following examples will all use the same basic information. Therefore, figures obtained in determining "total annual cost of a fringe item" should also be used in determining "cost in cents per hour" as well as "cost per employee."

1. Formula for Computing Total Annual Cost of a Fringe Item

a - Computing Total Annual Cost of Seven Paid Holidays

- If a plant employing 500 workers, with an average hourly rate of $1.80, has seven paid holidays - the total cost of the holidays would be figured by the following formula:

Number of Workers x Average Hourly Rate x Hours Off on Holidays

Therefore:

500 Workers x $1.80 x 56 = $50,400

Total Annual Cost - $50,400

In order to determine the cost of an additional holiday, the same formula would be used:

Number of Workers x Average Hourly Rate x Hours off on Holiday

Therefore:

500 Workers x +1.80 x 8 = $7,200

Total Annual Cost = $7,200

b - Computing Cost of 15-minute Paid Rest Period

The same formula would be used for this fringe item:

Number of Workers x Average Hourly Rate x Annual Number of Rest Hours

Therefore:

500 x $1.80 x 62.5 hours = $56,250

(62.5 hours is the annual paid rest period time which is arrived at by multiplying the daily rest period of 15 minutes times 250 - the average number of days worked per year - and dividing by 60 minutes:

$\frac{15 \times 250}{60} = 62.5$ hours)

Total Annual Cost = $56,250

c -Computing Total Annual Cost of Paid Vacations

Present Vacation Eligibility

50	workers	– None
100	"	– 1 week
200	"	– 2 weeks
150	"	– 3 weeks

Number of Workers x Average Hourly Rate x Hours of Vacation

Therefore:

100 x $1.80 x 40	=	$ 7,200
200 x $1.80 x 80	=	28,800
150 x $1.80 x 120	=	32,400
		$68,400

Total Annual Cost = $68,400

The total annual cost of an improved vacation plan (four weeks' vacation - 50 eligible people) would be figured in the following way:

Future Vacation Eligibility

50	workers	– None
100	"	– 1 week
200	"	– 2 weeks
100	"	– 3 weeks
50	"	– 4 weeks

100 x $1.80 x 40 =	$ 7,200	
200 x $1.80 x 80 =	28,800	
100 x $1.80 x 120 =	21,600	
50 x $1.80 x 160 =	14,400	
	$72,000	Total annual cost for improved plan
	68,400	Total annual cost for present plan
	$ 3,600	Additional annual cost

Total Annual Cost – $3,600

2. Formula for Computing Cost in Cents Per Hour for a Fringe Item

Three factors must be known in order to compute costs in cents per hour:

1. Total annual cost of fringe items
2. Average number of hours worked per year
3. Number of employees in the bargaining unit

Take the figures used and arrived at in section 1 - Formula for Computing Annual Cost of a Fringe Item.

a - Computing Cost in Cents Per Hour for Seven Paid Holidays

$$\frac{\text{Annual Cost}}{\text{Average Hours Worked Per year x Number of Workers}}$$

Therefore:

$$\frac{\$50,400}{2,080 \times 500} = 4.846 \text{ cents per hour}$$

Cost in cents per hour = 4.8

The cost of an additional holiday would be figured on the same basis:

$$\frac{\text{Annual Cost}}{\text{Average Hours Worked Per Year x Number of Workers}}$$

Therefore:

$$\frac{\$7,200}{2,080 \times 500} = 0.69 \text{ cents per hour}$$

Cost in cents per hour = 0.7 cents

b - Computing Cost in Cents Per Hour for 15-minute Paid Rest Period

$$\frac{\text{Annual Cost}}{\text{Average Hours Worked Per Year x Number of Workers}}$$

Therefore:

$$\frac{\$56,250}{2,080 \times 500} = 5.41 \text{ cents per hour}$$

Cost in cents per hour = 5.4 cents

c - Computing Cost in Cents Per Hour for Paid Vacations

$$\frac{\text{Annual Cost}}{\text{Average Hours Worked Per Year x Number of Workers}}$$

Therefore:

$$\frac{\$68,400}{2,080 \times 500} = 6.577 \text{ cents per hour}$$

Cost in cents per hour = 6.6 cents

A fourth week of vacation for 50 employees would be computed on the same basis:

$$\frac{\text{Annual Cost}}{\text{Average Hours Worked Per Year x Number of Workers}}$$

Therefore:

$$\frac{\$3,600}{2,080 \times 500} = 0.346 \text{ cents per hour}$$

Cost in cents per hour = 0.3 cents

Note: This method is a short-cut, accurate enough to compute cost for the purpose of negotiations. To be more accurate, we should not use 2,080 hours as the average per worker. Instead, we should use the actual number of

hours worked plus overtime minus hours paid but not worked (like holidays, vacations, rest periods, etc.). However, for our purposes the average figure of 2,080 hours per worker is sufficient.

3. **Formula for Computing Total Annual Cost Per Worker**

Take the figures used and arrived at in section 1 - Formula for Computing Annual Cost of a Fringe Item.

a - Computing Total Annual Cost Per Employee for Seven Paid Holidays

$$\frac{\text{Annual Cost}}{\text{Total Number of Workers}}$$

Therefore:

$$\frac{\$50,400}{500} = \$100.80$$

Total Annual Cost Per Worker = $100.80

The cost of an additional holiday would be figured on the same basis:

$$\frac{\$7,200}{500} = \$14.40$$

Total Annual Cost Per Worker = $14.40

b - Computing Total Annual Cost Per Worker for 15-minute Rest Period

$$\frac{\text{Annual Cost}}{\text{Total Number of Workers}}$$

Therefore:

$$\frac{\$56,250}{500} = \$112.50$$

Total Annual Cost Per Worker = 112.50

c - Computing Total Annual Cost Per Worker for Paid Vacations

$$\frac{\text{Annual Cost}}{\text{Total Number of Workers}}$$

Therefore:

$$\frac{\$68,400}{500} = \$136.80$$

Total Annual Cost Per Worker = $136.80

The annual cost of a fourth week of vacation for 50 people would be figured in the following way:

$$\frac{\text{Annual Cost}}{\text{Total Number of Workers}}$$

Therefore:

$$\frac{\$3,600}{500} = \$7.20$$

Total Annual Cost Per Worker = $7.20

Note: The formula takes into consideration the total number of workers covered by the bargaining unit and not the actual number benefiting from a particular fringe item.

This method indicates the money value of the whole package for all workers in the bargaining unit. For example, only 50 people benefit from the additional fourth week of vacation which costs 0.346 cents per hour for the total labor force over the year. During negotiations the Committee might have "traded" this fourth vacation week for an additional half-holiday (e.g. Christmas Eve), which would cost 0.345 cents per hour for the total labor force over the year. For all practical purposes, the cost for the half-holiday, which would benefit all workers, would be identical with the cost for the fourth week of vacation for 50 workers.

TACTICS AND TECHNIQUES

OF

COLLECTIVE BARGAINING NEGOTIATIONS

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TACTICS AND TECHNIQUES OF COLLECTIVE BARGAINING NEGOTIATIONS

INTRODUCTION

Collective Bargaining is a problem-solving and agreement-making process. It is probably the most effective and equitable means in our society for matching employer requirement with employee needs. It is called "bargaining" because the process involves the two parties making proposals and counter-proposals, giving and taking and compromising to reach an agreement. Some persons regard the collective bargaining process as a panacea which will solve all problems of employee relations. But that view substantially overstates the case. In the public sector, the term collective bargaining is often used to describe other procedures.

Much has been written about public sector collective bargaining and much more said. The point on which all experts agree is that collective bargaining is a dynamic, fluid and evolving process which places a premium on flexibility, ingenuity, and patience.

Labor relations in the public sector have changed drastically in the past several years. Personnel systems, once administered unilaterally by public management, have been changed by executive orders and/or laws leading to bilateral negotiations between public management and organized employees. Currently, the scope of this public sector collective bargaining is sometimes limited, as in the Federal sector, to personnel policies, practices and matters affecting working conditions. However, in an increasing number of public sector jurisdictions, bilateral negotiations also address themselves to wages, hours, and, in some instances, even to issues of mission and budget. There is movement in this direction in the Federal Government too.

Where collective bargaining exists, it limits the ability of the employer to determine unilaterally conditions of employment and at the same time permits employees to have significant input into decisions affecting their working conditions. The theory is that conditions of employment agreed upon in this bilateral manner generates greater employee support and higher employee morale than might otherwise be obtainable. One of the major objectives of the collective bargaining process is to reconcile the diverse interests of the employer and employees. Thus, the collective bargaining process is a mechanism for channeling and resolving conflict between the parties.

While public management has increasingly accepted bilateralism as the method of determining and administering personnel policies, practices, working conditions, etc., it has also learned that poor or inadequate management performance in this new process can lead to binding agreements which are very costly to management vis-a-vis direct cost items and/or limitations on the management prerogative and flexibility necessary for effective and efficient public operations.

Professional negotiators have learned that successful negotiations are the result of thorough preparations. They know that the most skillful bargainer is of little or no value without careful and diligent preparation to back him up.

One of the first steps in preparing is to select the management negotiating team and its chief spokesman and to delegate appropriate authority. Once the team is chosen, it should review agency personnel policies and practices and, especially, the agency's labor relations policy and philosophy. The management team must anticipate the union's demands. This can be accomplished by soliciting feedback from managers in general and first line supervisors in particular. A systematic review of grievances within the bargaining unit will provide clues. Also a review of the union's newspaper and convention proceedings may provide tip offs, as will a review of contracts negotiated by the union in other bargaining units.

Once the union's objectives have been anticipated, management should evaluate them and develop its responses to them. Management should also develop its own proposals regarding those goals it wants to obtain from negotiations. To support its proposals and counter proposals, management will need to collect, analyze, and systematize data ... much data. Bargaining data should relate to the specifics of management's proposals and

counterproposals but should also go beyond that in anticipation of union proposals.

Needless to say, adequate bargaining preparation takes time. This time must be made available unless management wants to face the consequences of inadequate preparations which could result in a poor agreement.

A final preparation step for management is to review and digest all that has gone before. Here management will want to finalize its bargaining strategy. Bargaining strategy refers to the overall objectives and goals that management hopes to achieve at the table. Once this strategy has been finalized, management will attempt to utilize bargaining techinques and tactics to obtain its goals.

INITIATING THE PROCEDURE

Once adequate advanced preparations have been completed and the "ground rules" for the conduct of negotiations established, substantive bargaining is initiated.

There is no accepted, standard procedure to start negotiations. Some employee organizations may send the list of their demands beforehand and expect the employer to respond at the first meeting. Others may simply indicate the areas they want to discuss and then present the actual demands at the first meeting. If the advance submission of union proposals is not the standard operating procedure, management should attempt to establish it. Likewise, management's proposals should be submitted to the union in advance of negotiations.

Once the proposals are received, the management bargaining team must analyze them thoroughly. The union's proposals should be analyzed from the standpoint of how much it would cost the employer to implement the requests, and further, from the standpoint of the legal and budgetary effect on management's responsibility to carry out its functions.

Management's team, in preparing its responses, should consider why the union made the proposal and what arguments the union may bring forth to support its position. This consideration will be important in determining which proposals the union may be willing to bargain away during the latter sessions, and which are priority matters; and what are the underlying problems in all union demands.

At the first formal session, then, the employee organization may elaborate on its written proposals and permit management to ask a few clarifying questions. Then, the second session would be the one at which management explains its proposals; and the third, the one at which the parties start to get down to the business of negotiating an agreement.

It is important to keep a record of the proceedings. Usually each party appoints a member of its bargaining team to take notes. It is not advisable to tape record since this tends to prevent a free and forthright exploration of the issues. It should be understood that all agreements on portions of the contract are tentative until the entire contract is agreed upon; and this should be clarified at the outset. It should also be mutually understood initially what, as the parties reach agreement on an issue, the issue will be put into writing and each party signify its acceptance with initials even though this acceptance is tentative pending agreement on the entire contract.

UNDERSTANDING THE DYNAMICS OF NEGOTIATIONS

One of the most prevalent fallacies concerning collective bargaining is that the parties are "equals." The fallacy lies in confusing procedural equality with actual bargaining power.

Many factors affect the outcome of negotiations: the time contracts expire, local and national economic conditions, organizational and administrative leadership, community environment and political situations, conditions of employment, local union membership support, the nature and availability of help to labor organizations from state and national affiliates, and the skill and degree of preparation of the negotiators.

The requirement of good faith bargaining does not preclude the parties from taking into account their relative bargaining power, nor from making proposals which reflect this assessment. The obligation to bargain in good faith is not an obligation to agree to every proposal made by the other party. Thus, even though the parties are procedural equals at the table and each is obligated to deal in good faith, the relative power of the parties is always a factor in the relationship. Bargaining power means simply the ability to bring about changes in the other party's

negotiating position which he would not make had he had absolute free choice. Pressure tactics are the techniques of exerting bargaining power.

The absence of a profit motive in the public sector does not eliminate sources of conflict or the utilization of bargaining power. Bargaining power is not limited solely to marketplace economic pressure. It would be a tragic mistake to assume that public employees have no bargaining power without the right to strike. Other factors, such as political pressure, negotiating skills, public opinion and psychological elements may be important sources of bargaining power.

The strike is the most controversial and the most publicized bargaining tactic used to show bargaining power. (Although public employee strikes are prohibited for all except some categories in three states, public sector strikes do occur.) Other pressure tactics are sanctions, slowdowns, demonstrations, informational picketing, refusal to work overtime, the refusal of teachers to participate in extracurricular activities and working strictly by the rules. Political action is another pressure tactic employed by public employee unions.

On occasion, the parties do not know how much power they have. Sometimes they have a great deal of unrecognized power. At other times they discover, to their dismay, that they do not have as much power as they'd thought. It is necessary to understand the power dimension to understand the process of collective bargaining. Power is not necessarily good or bad, and power can be used constructively as well as destructively. Perceptions of power are sometimes more important than the actual power itself. For example, an employer may believe a labor organization will call a strike if a concession is not granted. In fact, the union may not have the support of its members, but if the employer believes it has, management may act differently than it would otherwise.

In approaching the bargaining table, public management would do well to consider the dynamics of the employee organization with which it bargains. It should consider such factors as organization leadership, resources, morale, the community climate and the union's attitude toward negotiations. It should make the distinction between labor organizations with full-time professional staff and those without it. Normally, the full-time paid union professional has a different stake in the outcome of the negotiations than a rank and file employee leader who puts in full-time at a public sector job. The full-time leader may well put more emphasis on proposals to bring about organizational security and to obtain the bargaining goals of the national organization, while local rank and file negotiators are often more concerned about local work-related issues.

The fact that there was a competitive campaign between two or more labor organizations to win bargaining rights merits special consideration. Campaign promises may have exceeded reality. Negotiations with this background are often loaded with emotions which may be difficult to shake. There may be a tendency on the part of the labor organization in initial negotiations to concentrate on specific grievance cases which, as such, have no place at the bargaining table.

There is no pat formula for success in negotiations, but two suggestions may be helpful:

> Avoid debate on philosophical issues and concentrate on the specifics of an agreement.
>
> Regard bargaining not as a necessary evil but as a way to strengthen relationships between the parties and to provide for joint determination of matters of intimate concern to both.

BARGAINING TACTICS

The basic objective in collective bargaining negotiations is to reach agreement. Unfortunately, there are union and management representatives who approach collective bargaining as if it were some kind of trial by combat. Such an approach raises serious obstacles to the development of a constructive labor-management relationship. Negotiating is an art, not a science. It also can be a serious business, a game, a ritual, or a drama with unpredictable outcome.

Very early, the employer must decide what and how much it is prepared to offer. This is better done in the preparation stage of the process. The need for such a decision is obvious. The employer cannot afford to negotiate each item in isolation. It must consider the fiscal and total management situation.

It is common practice for the union to ask initially for more than it expects to receive, and for management to offer less than it will settle on. Productive collective bargaining will not be achieved unless each

party believes the other will act and proceed in good faith. Agreement will not be reached easily on all issues, and this is where the actual bargaining takes place. This is the important process of "give and take" in collective bargaining.

The timing of concessions is important. Gaining, or appearing to gain, concessions from management is usually a political necessity for a union. The employer who refuses to permit even the appearance of concession is risking substantial and continued hostility. In timing its proposals, counterproposals and concessions, neither the employer nor the union should assume the complete, unfettered rationality of the other side, but rather should attempt to anticipate the political and organizational stresses involved. Both bargaining teams should approach negotiations with a carefully planned set of priorities. Some will be monetary, some not. The negotiators should have a good understanding of which items are in the "must" category, which ones can be traded off and for how much. The crucial objective is not the resolution of particular items but the entire contract. Successful negotiations require insight into a wide range of objectives, priorities and possibilities. The situation in collective bargaining is different from bargaining in the regular marketplace. The labor-management relationship will continue indefinitely, even though a particular agreement comes to an end. The parties must live with one another. In collective bargaining, there is nearly always a hereafter. This fact requires a different approach to bargaining strategy than the single shot tactics of the common marketplace.

BASIC PRINCIPLES FOR MANAGEMENT NEGOTIATORS

Following are some principles for management negotiators to keep in mind at the bargaining table:

Be Yourself

The first rule the negotiator must follow is to be himself – that is, to use an approach which is consistent with his own personality, experience, and background. Some highly successful negotiators are "table-thumping bulls"; others are quiet and reserved. Each is effective if he uses his own personality to advantage.

It is often assumed that a calm, unemotional atmosphere is desired during the cross-table communication. The negotiator should not be a slave to this doctrine. He should follow his own personality and not be afraid of showing emotion if the timing appears proper. At the proper time, a certain amount of emotion and "brinkmanship" can be highly valuable. However, the intelligent use and control of emotion should not be at the expense of good manners and courtesy.

Be Ethical

It is axiomatic that the negotiator must be ethical. He is dealing with a long-range, highly personal relationship which has all the daily frictions of the typical marriage but without much likelihood of divorce. Thus, a temporary gain made through deception, craft, or distortion of facts will surely return at a later date to haunt the operating management. A negotiator dedicated to personal ethics will find that he may demand and receive the same from the other side.

Assume a Positive Bargaining Attitude

The negotiator should also strive for a positive attitude. No matter how ominous the union's power and bargaining position may be, the negotiator will do a better job for management if he assumes a posture of bargaining for a contract as he wants it, as opposed to merely bargaining against what the union is attempting to achieve. Negative negotiating merely puts the employer in a defensive position, forfeiting the essential element of control which is so necessary for successful negotiations.

Maintain Team Discipline

It is fundamental that only the principal negotiator will speak for the management group, unless it is previously understood that on specific points other members of the management team will interject their observations or statements. Another exception occurs when the chief negotiator, during a session, requests one of his team members to answer a certain question or to explore a certain practice or set of facts.

This does not mean that the other members of the management committee function as mere window dressing or casual observers. Each member should be selected with a specific purpose and role in mind, and

he should perform it. A common failure in this connection is for the person with responsibility for note-taking to become engrossed in the discussion and lay down his pencil. Each member of the bargaining team should stay alert and watch and listen closely. The time for communication is during the breaks and caucuses. If it can't wait, write notes.

Know Your Union Counter Parts

Prior to negotiations, management negotiators should prepare or be furnished with a biographical sketch of each union bargainer. This sketch should include his work and griveance histories. Rank and file committeemen frequently bargain from a position of personal or local self-interest. Although management's negotiator may be talking to the union's official spokesman, the real objective is to communicate with the local union bargainers and through them with the unit employees.

In effect, the management spokesman is building and selling a package which the union committee in turn must sell to the rank-and-file. The negotiator should visualize the union bargaining team standing before a membership meeting and explaining why they agreed to withdraw a certain proposal or to accept a certain counterproposal. At this point, the union team is in the same position as the management negotiator was earlier – it must sell the logic or philosophy involved.

Thus, the management negotiator is seeking a communications rapport with the union bargaining team through which he can convey effectively management's views and positions. It is one thing to state excellent points with a flourish of oratory. But the question is whether the other person hears, understands and is persuaded. Even if he does not agree with your view, you want to make certain he understands thoroughly why you hold such a view.

PROCEDURAL GUIDELINES FOR MANAGEMENT NEGOTIATIONS

Possibly the most important rule of procedure is for the negotiator not to permit the negotiation process to become stifled by procedural mechanics. Procedure is no more than an aid to decorum and orderly progress. It may also serve as a check against oversight and unnecessary haste. The following comments on procedure are made with the above cautions:

The Opening Sessions

Never underestimate the importance of the common courtesies of introductions and preliminary chit-chat. This provides the negotiator with valuable information in formulating his approach to setting and controlling the emotional tone of negotiation. At the outset, it is customary to settle such matters as session schedules, length of sessions, etc., if they have not been specified in the "ground rules."

After these preliminaries, the first step may be to review the union proposals in sequence. Normally, the negotiator avoids indicating the agency's position on any of the items. (The union usually has a pretty good idea, anyway.) The purpose is to explore problems which may have precipitated the proposal, and the intent and scope of the proposal. Frequently, such problems can be resolved to the satisfaction of the rank-and-file without the necessity of accepting the union's proposal in whole or in part.

As to the meaning of proposal language, the negotiator through questioning establishes the information base from which to draft counterproposals. He also establishes a record of intent which will serve as a valuable aid to interpretation and application in future grievance and/or arbitration cases. A word of caution about the questioning technique: Nothing will sour a committee more quickly than a routine and boring "who-what-when-where-and why" interrogation on proposal after proposal. Similarly, if some proposals are ludicrous on their face, the negotiator should refrain from over-reaction when he questions them. Somewhere in the background of the proposals there is probably some very serious intent. The negotiator's goal is not to display his superior wit or to engage in ridicule, but rather to identify and attempt to solve problems.

The Intermediate Sessions

When management submits its response to each union proposal, it should also submit its own management-initiated proposals (unless they were submitted previously) and explain and clarify them. Another caution about management proposals relates to whether they should be initiated in areas where there are disputes over the meaning of existing contract language. If management is not prepared to take an adamant stand in support of its proposal, it may forfeit substantial ground in future interpretation of the existing language.

Management's first response may be in specific written language. Or it may be an oral response, covering areas in which it is willing to move. In the latter case, the parties will have agreed that if agreement is reached in principle, specific contract language will then be submitted in accordance with the oral statements. Most frequently the employer's first response is a combination -- both oral and written.

The most marked distinction between amateur and professional negotiators is in the matter of timing. The professional may have the urge to make an observation or proposal, but he controls himself and selects the most appropriate and effective time. For example, occasionally bargaining committees have a "loudmouth." The amateur jumps on him at the first opportunity. The professional, knowing that others on the union committee will also grow tired of him, waits until this point is reached. His remarks are then more effective and they do not engender sympathy for the offender.

The number of issues will eventually narrow to the point where the negotiators feel the timing is right to "wrap it up". Thus, patience is an essential characteristic for the negotiator, and he must carefully encourage patience on the part of the other members of the management team.

The extent to which the management negotiator should hold back his economic proposals, until the balance of the "non-economic" items have been resolved, is a matter of timing and "feel". However, careful analysis should be made as to whether there are, in fact, such things as "non-economic" items. From a long-range view a particular clause which puts no money into the employee's pocket may, nevertheless, be costly to the employer in future years.

The Final Sessions

When it is apparent that the parties are reaching the final stage of negotiations, it is important that the negotiator not permit himself the luxury of an "it's all settled" emotional letdown. There are essential functions to perform.

Members of the negotiating team should review the language, intent and scope of each of the proposals, and carefully check each proposal against existing provisions in the contract to insure that no new problems or "sleepers" have been created.

The chief negotiator should arrange for a full session of both committees (and with the mediator, if applicable) in which the settlement is reviewed and the mechanics of ratification and approval of top management are clarified. The details of whether there will be retroactivity, whether such is conditioned upon ratification by a certain date, etc., should be spelled out with the utmost clarity. Finally, assurance should be obtained from the union committee and union officials that they will not only recommend the package but will exert their best efforts toward obtaining ratification.

TECHNIQUES FOR FACILITATING AGREEMENT

There are many techniques utilized by the professional negotiator to facilitate the reaching of a sound, mutually satisfactory agreement. Some of the most common of these techniques are the following:

The "Yes Habit"

Start discussions from areas of common agreement rather than from an obviously controversial matter. Secure a basis of agreement on which to build. Subsequent favorable accommodations may be more easily reached on disputed issues.

Assume Acceptance

Do not indicate a lack of confidence in the reasonableness or acceptability of any management proposal.

Allow for Face-Saving

It never hurts to be gracious. Being a bad winner over small victories may make it very difficult to reach final settlement. Creating resentment or embarrassment does not contribute to problem solving which is the hallmark of constructive labor-management relations.

Be Prepared to Prove Your Point

In the nature of collective bargaining, the union is usually the moving party – submitting its proposals or challenging a management action through the grievance procedure. Because the union is so often the moving party, it tends to assume the burden of proving its case.

Keep in mind, however, that the management team should also be prepared to explain the reasons for its proposals and for rejecting any union demand or proposal.

Explain, Discuss, Persuade – Don't Plead

Remember that you are engaged in collective bargaining, not collective begging. Be quick to demonstrate respect and courtesy; be equally quick to demand the same consideration.

Cite the Advantages of Your Proposal to the Other Party

While this approach can be easily overdone, it happens with some frequency that the management proposal carries some important advantages for the union. Where these benefits are significant, they serve as a proper additional factor in support of your case.

Keep Discussions Problem-Oriented Rather than Personality-Centered

By far the most fruitful atmosphere for reaching sound agreements is the recognition by both parties of mutual interest in solving problems of common concern. The greater the degree of objectivity that can be developed, the more constructive the relationship.

Preparation of Actual Proposals

Two suggested methods:

1. Working up clauses in exact contract language offers the solution as well as the problem, and it is possible that devotion to language or to an exact solution may hinder agreement;
2. Presenting the problem with a generalized suggestion for its solution allows more freedom for bargaining with less initial bickering on language. A combination of both methods might be advisable.

Dealing with Proposals

Both parties have responsibility for giving realistic consideration to proposals offered by the other. It should be assumed that there are sound reasons for each proposal, however odd the proposals may appear.

While Negotiations Are in Progress

Keep in close touch with the entire management team through progress reports. This gives other members of the management team a feeling of participation, and emphasizes the importance of supporting the management negotiating committee. Some ways of keeping in touch include: regular and special meetings, talks by committee members, a special committee of management representatives from each department and shift to serve as a reporting, advisory and contact body.

WHO IS THIS NEGOTIATOR

In a recent article in The Journal of Navy Civilian Manpower Management, Mr. A. DiPasquale, former Vice President of American Air Lines for Industrial Relations, and currently Navy's Director of Labor and Employee Relations, made the following observations:

> ". . . .With the proliferation of exclusive units (which give a union the right to represent those in the unit and engage in collective bargaining), a new breed of specialist has come into prominence. His presence has long been felt in private industry. He is called the negotiator. His forum is the conference room where the collective bargaining scene is enacted. It is here that committees for union and management sit across the conference table – eyeball to eyeball.
>
> The Chief negotiator for each side is the man who plays the leading role. His brilliance or ineptitude spells the difference between success or failure of the conference mission. He participates in a contest where the stakes are high. He does not

gamble but exercises judgment and takes a businessman's risk during the ebb and flow of contract making.

What kind of a man is he? What need he possess to be a consummate artist in his chosen profession?

To begin with, he is a specialist by designation but a generalist in practice. He has a liberal education in history; social science; economics, as it affects costs and people needs; management; labor law and practices, and oral and written communication. He is daring, innovative and imaginative. He is well versed in the operations aspect of the business at hand; in political as well as organizational trends in his industry or agency; personnel practices, and the meaning and impact of proposals intended for contract commitment.

He has maturity. He can conceive of Utopia but cherishes no dream of attaining its promises, for his is a world of harsh realities. He understands management enterprise and the philosophy underlying the American trade union movement. He has learned the value of balanced bargaining strength but recognizes that, in serious confrontation, balance may shift so as to abort the meeting if either party tends to overreach. He acts as a stabilizer and tries to keep the conference on an even keel.

A good negotiator is both a good talker and a good listener. He must be articulate when expounding his own views, but he must also know how to listen – not only to be politely silent, but to hear, understand and interpret all that is said at the bargaining table. To understand not only what the other side says, but also what they mean and what motivates them to say it, he must also be a practical behavioral scientist. He must realize that logic is often subordinated unwittingly to human emotions such as pride, fear, love, hate, or prejudice. Realizing all this, he accepts it with tolerance as a reality, and does not sit at the conference table in the role of a crusader.

He is also a student, a man who has studied his discipline and has attained a broad grasp of the nature of his profession. He has developed his techniques so as to be able to act either as an advocate or defender – and occasionally, as a mediator when a stalemate appears imminent. He has a love for facts and logic but is practical enough to understand that variables of doubt, creditability, emotion and fear often distort the validity of facts. He is aware of the negative impact of extreme position-taking.

He is a man of sterling character. The esteem in which he is held overcomes condemnation which may otherwise result due to disagreements or denials he may assert. He believes in maneuver, tactics or strategy, but never deception. He does not dabble in chicanery. His reputation rests on pillars of fairness and firmness, neither of which implies softness or expediency. He champions a right and sells it on the basis of mutuality of interest – not might. He stands as a leader.

A negotiator can also be a loner. Through a disciplined mind, he caps his frustrations and hides his disappointments, but, outwardly, his image and portrayals are framed in optimism and encouragement. When the going gets rough his metabolism may alter, but the physical or mental strain he bears alone, seldom visible to those about him. During periods of recess his retreat is to meditation and thought – searching for elusive solutions he must conjure or fashion.

He has the touch of the diplomat. His arsenal of weapons includes suggestion and persuasion, and, strangely enough, disarming techniques as distinguished from attack. He can be conciliatory and amendable to compromise even in the face of abrasiveness or militancy. He aims for joint consent and the good of the organization and its employees – not self-aggrandizement. He is high on moral as well as legal obligations. He studies proposals and shows a high capability to counter-propose, thus avoiding the absolute negative response whenever possible. He seeks to hold the parties together to keep alive the coordinated effort.

Whenever he is a management or union negotiator, he takes great pride in his work. His purpose is to make a contribution and, accordingly, he strives for an agreement arrived at through voluntary consent. He prefers direct understandings between the parties. He recognizes that an agreement is the

alloy forged out of elements each of the parties introduced earlier in discussions. He helps shape and mold that alloy.

Is there such a man? There must be – both in the public and private sectors – for each year thousands of agreements are negotiated – unheralded, unpublished, and without fanfare or strife. The negotiators must be credited in large part for such achievements."

CONCLUSION – DO's AND DON'Ts IN NEGOTIATING THE CONTRACT

Some of the elements contributing to successful negotiations include: gathering of information prior to negotiation, evaluation of past experience, selection of the negotiating team whose members have skill in negotiating techniques and an understanding of the total work situation, and the examination of every detail in the formulation of the contract. There is no definite formula to follow in bargaining. However, here are some do's and don'ts which could determine its success or failure:

DO	maintain a positive bargaining attitude.
DO	analyze every proposal to determine what it will cost now and in the future, and avoid hidden cost items.
DO	ask for revisions or modifications of your contract to give you greater efficiency
DO	remember that collective bargaining is a two-way street - that the union will often "trade" to get what it wants.
DO	make effective use of the counterproposal.
DO	state at the beginning that the terms of the contract become effective on the date the agreement is signed, not retroactive to the date bargaining begins.
DO	stick by your position with courage when you know you are fair and right.
DO	make sure you have not relinquished important rights.
DO	analyze, digest, review and scrutinize suggested contract language before agreeing, to avoid "give-away" clauses and "sleepers."
DO	remember that you have a duty to bargain in good faith, but that you are free to disagree and reject any for proposal.
DO	understand that unions are political organizations and take into account their need for face-saving devices.
DO	make sure the final contract has been checked to make certain its provisions do not violate law or higher regulation.
DO	try to negotiate from your old labor agreement and your own proposals.
DO	avoid permitting the union to take the ball away from you by constant referral to its own proposals.
DO	personalize the things that are good and depersonalize the things that are bad.
DO	put the burden of proof on the union negotiators.
DO	ask questions that cannot be answered with a simple yes or no.
DO	keep negotiations moving and to the point.
DON'T	relinquish control of the meeting.
DON'T	interrupt the union presentation of a proposal, no matter what you think of it personally.
DON'T	bargain solely on union demands.
DON'T	be misled on mutual consent clauses. (Remember that ability to operate effectively and efficiently is your most important consideration and that frequently mutual consent clauses give to the union authority not originally intended and a veto over management actions.)
DON'T	make commitments without deliberation.
DON'T	offer to make major concessions unless the offer is contingent upon the reaching of a complete agreement.
DON'T	give away in one clause of the agreement what you have carefully obtained or preserved in another.
DON'T	overlook the need to keep abreast of w employees themselves are thinking a how they are reacting.
DON'T	neglect to consider what your agree will mean to others in your agency and/or community.
DON'T	automatically assume that what is perfectly logical to a person with a management orientation also appears perfectly logical to a person with a union background.
DON'T	forget that the goal of collective bargaining negotiations is problem solving as embodied in a mutually satisfactory written agreement.

THE SCOPE
OF
NEGOTIATIONS

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SUBJECT MATTER OF NEGOTIATIONS

In the private sector, from the statutory language requiring the parties to "confer in good faith with respect to wages, hours, and other terms and conditions of employment," a distinction has evolved between **mandatory**, **permissive**, and **prohibited** subjects.

Definitions:

- **Mandatory** subjects - those subjects that the two parties must bargain about, if either party raises them in negotiation, although they are under no obligation to reach agreement. For example, in the private sector, basic rates of pay, paid holidays, subcontracting and layoffs would be **mandatory** subjects of bargaining.

- **Permissive** subjects - those subjects about which management and the union **may** bargain if they choose, but are not required to do so; in such cases they will not be guilty of a refusal to bargain in good faith. Examples of **permissive** subjects of bargaining in the private sector would be: union label, settlement of unfair labor practices as a condition of agreement, and the scope of the unit of agreement.

- **Prohibited** subjects - illegal subjects about which the parties may not bargain. Examples from the private sector would be negotiation of a closed shop or hot cargo clause.

It should be noted that in the private sector, over time, the scope of bargaining has increased; furthermore, these three divisions of the subject matter for bargaining have not been static.

COMPARISON CHART OF NEGOTIABILITY OF ISSUES

Issue	Private Sector	Your Jurisdiction
I. Wages and Rates of Pay		
Basic rates of pay	Mandatory	
General Wage Adjustments:		
A. Wage reopener	Mandatory	
B. Specified deferred increases	Mandatory	
C. Cost of living escalators	Mandatory	
D. Increases in pay based on increases in productivity	Mandatory	
Job evaluation plans as they relate to wages	Mandatory	
Procedures for changing wage rates for new or changed jobs	Mandatory	
Individual Wage Adjustments:		
A. Automatic	Mandatory	
B. Merit Increases	Mandatory	
C. Combined merit and automatic increases	Mandatory	
Wage guarantees:		
A. Caused by technological change	Mandatory	
B. Caused by new product or new product mix	Mandatory	
Piece Rates and Wage Incentive Systems:		
A. Adoption, revision or elimination of incentive system	Mandatory	

Issue		Private Sector	Your Jurisdiction
I.	**Wages and Rates of Pay (Cont'd)**		
B.	Setting of incentive rates	Mandatory	
C.	Limitations on incentive rate changes	Mandatory	
D.	Time studies	Mandatory	
E.	Minimum guarantees	Mandatory	
F.	Spoiled work and failure to meet standards	Mandatory	
	Reporting and Call Back Guarantees:		
A.	Reporting pay	Mandatory	
B.	Call-back and call-in pay	Mandatory	
	Wage rates on transfer, promotion and demotion	Mandatory	
	Wage Differentials:		
A.	Shift differentials	Mandatory	
B.	Area differentials	Mandatory	
C.	Handicapped workers differential	Mandatory	
D.	Seasonal employee differential	Mandatory	
E.	Premium while replacing salaried employees	Mandatory	
F.	Premium for instruction duties	Mandatory	
G.	Premium for hazardous duties	Mandatory	
H.	Premium for safety committee work, etc.	Mandatory	
	Time and Manner of Wage Payment:		
A.	Length of pay period	Mandatory	
B.	Interval between pay period and pay day	Mandatory	
C.	Pay day specified	Mandatory	
D.	Time and method of payment	Mandatory	
E.	Pay day in holiday week	Mandatory	
F.	Pay on discharge or quit	Mandatory	
G.	Deductions	Mandatory	
	Change of payment from a salary base to an hourly base	Mandatory	
	Overtime pay	Mandatory	
	Paid Holidays	Mandatory	
	Paid Vacations	Mandatory	
II.	**Employee Benefits and Services**		
	Bonuses, Gratuities, and Subsidies:		
A.	Christmas bonus	Mandatory	
B.	Year end bonus	Mandatory	

Issue		Private Sector	Your Jurisdiction
II.	**Employee Benefits and Services (Cont'd)**		
C.	Semi-Annual bonus	Mandatory	
D.	Length of service bonus	Mandatory	
E.	Meals	Mandatory	
F.	Education fees	Mandatory	
G.	Employer discounts	Mandatory	
H.	Discounts on management services	Mandatory	
Pensions and other welfare		Mandatory	
Employee expenses:			
A.	Uniforms	Mandatory	
B.	Tools	Mandatory	
Severance Pay		Mandatory	
Income Maintenance:			
A.	Weekly guarantees	Mandatory	
B.	Monthly guarantees	Mandatory	
C.	Annual guarantees	Mandatory	
D.	Supplemental unemployment benefit plans	Mandatory	
III.	**Design and Scheduling of Work**		
Hours		Mandatory	
Work schedules		Mandatory	
Scheduling hours of work		Mandatory	
Overtime:			
A.	Daily and weekly overtime	Mandatory	
B.	Overtime rules	Mandatory	
Nonproductive Time:			
A.	Lunch periods	Mandatory	
B.	Rest periods	Mandatory	
C.	Clean up and work preparation time	Mandatory	
D.	Waiting, standby and travel time	Mandatory	
E.	Injury or illness	Mandatory	
F.	Holidays	Mandatory	
G.	Vacations	Mandatory	
IV	**Grievances and Arbitration**		
Grievance procedures		Mandatory	
Arbitration		Mandatory	
V.	**Personnel Policies, Practices, and Procedures**		
Hiring			
A.	Notice to union	Mandatory	
B.	Physical Examination	Mandatory	
Lay offs		Mandatory	

Issue	Private Sector	Your Jurisdiction
Lay off procedures:		
A. Consultation with Union	Mandatory	
B. Selection of employees for lay off	Mandatory	
C. Exception to seniority rules	Mandatory	
D. Notice of lay off	Mandatory	
E. Lay off pay	Mandatory	
Bumping and Transfer to avoid lay off:		
A. Employees entitled to bumping rights	Mandatory	
B. Area in which bumping rights may be exercised	Mandatory	
C. Restriction to bumping	Mandatory	
D. Interplant transfer	Mandatory	
Rehiring procedures	Mandatory	
Leave of Absence:		
A. Sick leave	Mandatory	
B. Military leave	Mandatory	
Promotion:		
A. Post of job vacancies and bidding	Mandatory	
B. Selection of employees for advancement	Mandatory	
C. Trial periods	Mandatory	
Transfers	Mandatory	
Seniority	Mandatory	
Discharges:		
A. Cause for discharge	Mandatory	
B. Discharge procedure	Mandatory	
C. Appeals procedure	Mandatory	
D. Reinstatement and back pay	Mandatory	
Discipline:		
A. Types of discipline procedures	Mandatory	
B. Degrees of discipline for specified offenses	Mandatory	
C. Restrictions on the imposition of discipline	Mandatory	
Suspensions	Mandatory	
Compulsory retirement	Mandatory	
VI. Working Conditions		
Guarantee against discrimination:		
A. Race, creed, color, sex and national origin	Mandatory	
B. Union activity	Mandatory	

Issue	Private Sector	Your Jurisdiction
VI. Working Conditions (Cont'd)		
Management rules:		
A. Relationship of rules to contract	Mandatory	
B. Establishment or determination of department rules	Mandatory	
C. Agency rules	Mandatory	
Working rules:		
A. Time clocks	Mandatory	
B. Rules for special trades	Mandatory	
C. Work loads	Mandatory	
Safety:		
A. Safety equipment	Mandatory	
B. Safety rules	Mandatory	
C. Measures to implement rules	Mandatory	
D. Safety committees	Mandatory	
Performance of bargaining work by supervisor	Mandatory	
Definition of bargaining unit work	Mandatory	
Subcontracting	Mandatory	
VII. Services to Labor Organizations		
Use of bulletin boards by union	Mandatory	

Issue	Private Sector	Your Jurisdiction
VIII. Relationship With the Union		
Arrangements for negotiations	Mandatory	
Internal Union Affairs:		
A. Job classifications that shop stewards are to be chosen from	Permissive	
B. Whether non-union employees shall have the right to vote upon provisions of the contract negotiated by the union	Permissive	
C. Employee ratification as a condition precedent to execution of a collective bargaining agreement	Permissive	
D. Contract should become void whenever the percentage of employees paying their dues falls below 50%.	Permissive	
E. Union must provide withdrawal cards to any employee who might be transferred out of the unit.	Permissive	
The scope of the unit in the agreement	Permissive	
Coverage of supervisors by the agreement	Permissive	

Issue	Private Sector	Your Jurisdiction
VIII. Relationship With the Union (Cont'd).		
Settling on the parties to a collective bargaining agreement (multi-unit)	Permissive	
Posting of performance bonds	Permissive	
Union label	Permissive	
Settlement of unfair labor practice charges as a condition of agreement	Permissive	
Union Security:		
A. Union shop	Mandatory	
B. Agency shop	Mandatory	
C. Closed shop	Prohibited	
D. Maintenance of membership	Mandatory	
E. Penalty for loss of union membership	Mandatory	
F. Dues checkoff	Mandatory	
Non-discriminatory hiring hall	Mandatory	
Hot cargo clauses	Prohibited	
Union demand of a contract provision that is inconsistent with its duty of fair representation owed by the union to its members	Prohibited	
Proposal which requires a separation on the basis of race	Prohibited	
A rule or regulation favoring union members	Permissive	
Employer right to discharge employees for union activity	Prohibited	
Management rights	Mandatory	
No-strike clause	Mandatory	
IX. Contract Terms		
Duration of agreement	Mandatory	

GOOD FAITH BARGAINING —
PRIVATE SECTOR EXPERIENCE

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GOOD FAITH BARGAINING – PRIVATE SECTOR EXPERIENCE

Under 8(d) of the Taft-Hartley Act, ". . . to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at **reasonable times** and confer in **good faith** with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession."

The most difficult issue in refusal to bargain cases is whether a party is negotiating in good faith, since this requires a subjective evaluation of the party's attitude as reflected in his course of conduct during negotiations.

The NLRB and the courts have ruled the following conduct to be a per se violation of the bargaining duty.

- A refusal to discuss a subject within the area of so-called mandatory bargaining.
- The failure to meet a reasonable request for data necessary to an intelligent discussion of a mandatory bargaining topic. This is viewed as removing the subject from the bargaining table just as effectively as an outright refusal to discuss the matter.
- Insistence to the point of impasse upon including in a contract a subject that is outside the scope of mandatory bargaining.

With the above exceptions, the inquiry in refusal-to-bargain cases centers upon whether a party's conduct throughout negotiations warrants an inference that he was bargaining without a sincere desire to reach agreement. Some employer conduct may strongly support an inference of bad-faith bargaining such as:

- Failing to give negotiators sufficient authority to bind the employer.
- Refusing to sign an agreement already reached.
- Unilaterally granting wage increases or changing other benefits without consulting with the union.
- Surface bargaining, i.e., merely going through the motions of bargaining.
- Arbitrary scheduling of the day and time of a bargaining meeting.
- An employer's determined and inflexible position toward a union position.
- Dilatory tactics with an apparent intent to reach an impasse, unreasonable procrastination in executing an agreement, or delay in scheduling meeting.
- Lack of willingness to compromise.
- Proposals that are patently so unreasonable as to frustrate agreement
- Injection of numerous new proposals after several months of bargaining.
- Submission of new issues after the parties have reached agreement.
- Proposals for contracts of excessively long or short duration.
- Refusals to accede to and failure to offer counter-proposals to union demands for checkoff or other forms of union security.
- Insistence on a "broad" management prerogative clause that would undermine the union's ability to adequately represent the employees.
- Insistence on unilateral control by management of wages, hours, and terms of employment.
- Insistence on union waiving most of its rights under the Act.
- Imposing onerous conditions upon either bargaining or the execution of the contract, e.g.,

demanding a union waiver of grievances as a condition for agreement.

- Commission of unfair labor practices during negotiations.

- Totality of conduct.

Regulations of the Federal

Mediation and Conciliation Service

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
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PART 1425. MEDIATION ASSISTANCE IN THE FEDERAL SERVICE[1]

SEC.

1425.1 Definitions
1425.2 Functions of the Service under Executive Order 11491
1425.3 Notice to Service of agreement negotiations
1425.4 Duty of parties
1425.5 Use of third-party mediation assistance

AUTHORITY: The provisions of this Part 1425 issued under secs. 202, 203, 61 Stat. 153; 29 U.S.C. 172, 173; sec. 16, E.O. 11491, 34 F.R. 17605, 3 CFR 1969 Supp.

SEC. 1425.1 **Definitions.** As used in this part:

(a) *The Service* means the Federal Mediation and Conciliation Service.

(b) *Party* or *parties* means (1) any appropriate activity, facility, geographical subdivision, or combination thereof, of any agency as that term is defined in section 2(a) of Executive Order 11491, or (2) a labor organization as that term is defined in section 2(e) of Executive Order 11491.

(c) *Third-party mediation assistance* means mediation by persons other than Federal Mediation and Conciliation Service commissioners.

(d) *Proffer its services* means to make the services and facilities of the Federal Mediation and Conciliation Service available either on its own motion or upon the specific request of one or both of the parties.

SEC. 1425.2 **Functions of the Service under Executive Order 11491.** The Service will extend its full assistance to the Federal Labor-Management Relations Program prescribed by Executive Order 11491. The following types of assistance are available:

(a) *Dispute mediation.* The Service may proffer its assistance in any negotiation dispute, except as provided in section 11(c) of Executive Order 11491, when earnest efforts by the parties to reach agreement through direct negotiation have failed to resolve the dispute. When the existence of a negotiation dispute comes to the attention of the Service through a specific request for mediation from one or both of the parties, through notification under the provisions of section 1425.3, or otherwise, the Service will examine the information concerning the dispute and if, in its opinion, the need for mediation exists, the Service will use its best efforts to assist the parties to reach agreement.

(b) *Preventive mediation.* The Service may make available educational and other preventive mediation services in order to build constructive and cooperative relationships between the parties and to handle specific labor-management problems apart from formal agreement negotiations.

(c) *Arbitration.* The Service will, on request, provide a panel of arbitrators from its roster, under rules and regulations set forth in part 1404 of this chapter, for the resolution of employee grievances or disputes involving the interpretation or application of an existing agreement. Except in unusual circumstances, the Service will not proffer mediation assistance in grievances.

SEC. 1425.3 **Notice to Service of agreements negotiations.** In order that the Service may provide assistance to the parties, notice of the desire to amend, modify or terminate an existing agreement shall be given to the appropriate regional office of the Service. This notice shall be filed with the regional director of the region in which the negotiations will take place. The notice shall be filed by the party initiating the negotiations at least thirty (30) days prior to the expiration of an existing agreement. Parties entering initial agreement negotiations may also request the assistance of the Service by filing such notice. The following form, FMCS Form F-53,[3] has been prepared by the Service for use by the parties in filing such notice.

SEC. 1425.4 **Duty of parties.** It shall be the duty of the parties to participate fully and promptly in any meetings arranged by the Service for the purpose of assisting in the settlement of a negotiation dispute.

SEC. 1425.5 **Use of third-party mediation assistance.** If the parties should mutually agree to third-party mediation assistance other than that of the Service, both parties shall immediately inform the Service in writing of this agreement. Such written communication shall be filed with the regional director of the region in which the negotiation is scheduled, and shall state what alternate assistance the parties have agreed to use.

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[1] Issued April 21, 1970; revised May 29, 1970.

[2] Filed as part of the original document. Copies of this form are available upon request to any office of the Service.

PART 1404. ARBITRATION[2]

SEC.

1404.1 Arbitration
1404.2 Composition of roster maintained by the Service
1404.3 Security status
1404.4 Procedures; how to request arbitration services
1404.5 Arbitrability
1404.6 Nominations of arbitrators
1404.7 Appointment of arbitrators
1404.8 Status of arbitrators after appointment
1404.9 Prompt decision
1404.10 Arbitrator's award and report
1404.11 Fees of arbitrators
1404.12 Conduct of hearings

AUTHORITY: The provisions of this Part 1404 issued under sec. 202, 61 Stat. 153, as amended; 29 U.S.C. 172. Interpret or apply sec. 3, 80 Stat. 250, sec. 203, 61 Stat. 153; 5 U.S.C. 552, 29 U.S.C. 173.

SEC. 1404.1 **Arbitration.** The labor policy of the U.S. Government is designed to foster and promote free collective bargaining. Voluntary arbitration is encouraged by public policy and is in fact almost universally utilized by the parties to resolve disputes involving the interpretation or application of collective bargaining agreements. Also, in appropriate cases, voluntary arbitration or factfinding are tools of free collective bargaining and may be desirable alternatives to economic strife in determining terms of a collective bargaining agreement. The parties assume broad responsibilities for the success of the private juridical system they have chosen. The Service will assist the parties in their selection of arbitrators.

SEC. 1404.2 **Composition of roster maintained by the Service.**

(a) It is the policy of the Service to maintain on its roster only those arbitrators who are qualified and acceptable, and who adhere to ethical standards.

(b) Applicants for inclusion on its roster must not only be well-grounded in the field of labor-management relations, but, also, usually possess experience in the labor arbitration field or its equivalent. After a careful screening and evaluation of the applicant's experience, the Service contacts representatives of both labor and management since arbitrators must be generally acceptable to those who utilize its arbitration facilities. The responses to such inquiries are carefully weighed before an otherwise qualified arbitrator is included on the Service's roster. Persons employed full time as representatives of management, labor, or the Federal Government are not included on the Service's roster.

(c) The arbitrators on the roster are expected to keep the Service informed of changes in address, occupation or availability, and of any business connections with or of concern to labor or management. The Services reserves the right to remove names from the active roster or to take other appropriate action where there is good reason to believe that an arbitrator is not adhering to these regulations and related policy.

SEC. 1404.3 **Security status.** The arbitrators on the Service's roster are not employees of the Federal Government, and, because of this status, the Service does not investigate their security status. Moreover, when an arbitrator is selected by the parties, he is retained by them and, accordingly, they must assume complete responsibility for the arbitrator's security status.

SEC. 1404.4 **Procedures; how to request arbitration services.** The Service prefers to act upon a joint request which should be addressed to the Director of the Federal Mediation and Conciliation Service, Washington, D.C. 20427. In the event that the request is made by only one party, the Service may act if the parties have agreed that either of them may seek a panel of arbitrators, either by specific ad hoc agreement or by specific language in the applicable collective bargaining agreement. A brief statement of the nature of the issues in dispute should accompany the request, to enable the Service to submit the names of arbitrators qualified for the issues involved. The request should also include a copy of the collective bargaining agreement or stipulation. In the event that the entire agreement is not available, a verbatim copy of the provisions relating to arbitration should accompany the request.

SEC. 1404.5 **Arbitrability.** Where either party claims that a dispute is not subject to arbitration, the Service will not decide the merits of such claim. The submission of a panel should not be construed as anything more than compliance with a request.

SEC. 1404.6 **Nominations of arbitrators.**

(a) When the parties have been unable to agree on an arbitrator, the Service will submit to the parties the names of seven arbitrators unless the applicable collective bargaining agreement provides for a different number, or unless the parties themselves request a different number. Together with the submission of a panel of suggested arbitrators, the Service furnishes a short statement of the background, qualifications, experience and per diem fee of each of the nominees.

(b) In selecting names for inclusion on a panel, the Service considers many factors, but the desires of the parties are, of course, the foremost consideration. If at any time both the company and the union suggest that a name or names be omitted from a

[1] Issued September 5, 1968.

panel, such name or names will be omitted. If one party only (a company or a union) suggests that a name or names be omitted from a panel, such name or names will generally be omitted, subject to the following qualifications: (1) If the suggested omissions are excessive in number or otherwise appear to lack careful consideration, they will not be considered; (2) all such suggested omissions should be reviewed after the passage of a reasonable period of time. The Service will not place names on a panel at the request of one party unless the other party has knowledge of such request and has no objection thereto, or unless both parties join in such request. If the issue described in the request appears to require special technical experience or qualifications, arbitrators who possess such qualifications will, where possible, be included in the list submitted to the parties. Where the parties expressly request that the list be composed entirely of technicians, or that it be all-local or nonlocal, such request will be honored, if qualified arbitrators are available.

(c) Two possible methods of selection from a panel are—(1) at a joint meeting, alternately striking names from the submitted panel until one remains, and (2) each party separately advising the Service of its order of preference by numbering each name on the panel, In almost all cases, an arbitrator is chosen from one panel of names. However, if a request for another panel is made, the Service will comply with the request, providing that additional panels are permissible under the terms of the agreement or the parties so stipulate.

(d) Subsequent adjustment of disputes is not precluded by the submission of a panel or an appointment. A substantial number of issues are being settled by the parties themselves after the initial request for a panel and after selection of the arbitrator. Notice of such settlement should be sent promptly to the arbitrator and to the Service.

(e) The arbitrator is entitled to be compensated whenever he receives insufficient notice of settlement to enable him to rearrange his schedule of arbitration hearings or working hours. In other situations, when an arbitrator spends an unusually large amount of time in arranging or rearranging hearing dates, it may be appropriate for him to make an administrative charge to the parties in the event the case is settled before hearing.

SEC. 1404.7 **Appointment of arbitrators.**

(a) After the parties notify the Service of their selection, the arbitrator is appointed by the Director. If any party fails to notify the Service within 15 days after the date of mailing the panel, all persons named therein may be deemed acceptable to such party. The Service will make a direct appointment of an arbitrator based upon a joint request, or upon a unilateral request when the applicable collective bargaining agreement so authorizes.

(b) The arbitrator, upon appointment notification, is requested to communicate with the parties immediately to arrange for preliminary matters such as date and place of hearing.

SEC. 1404.8 **Status of arbitrators after appointment.** After appointment, the legal relationship of arbitrators is with the parties rather than the Service, though the Service does have a continuing interest in the proceedings. Industrial peace and good labor relations are enhanced by arbitrators who function justly, expeditiously and impartially so as to obtain and retain the respect, esteem and confidence of all participants in the arbitration proceedings. The conduct of the arbitration proceeding is under the arbitrator's jurisdiction and control, subject to such rules of procedure as the parties may jointly prescribe. He is to make his own decisions based on the record in the proceedings. The arbitrator may, unless prohibited by law, proceed in the absence of any party who, after due notice, fails to be present or to obtain a postponement. The award, however, must be supported by evidence.

SEC. 1404.9 **Prompt decision.**

(a) Early hearing and decision of industrial disputes is desirable in the interest of good labor relations. The parties should inform the Service whenever a decision is unduly delayed. The Service expects to be notified by the arbitrator if and when (1) he cannot schedule, hear and determine issues promptly, and (2) he is advised that a dispute has been settled by the parties prior to arbitration.

(b) The award shall be made not later than 30 days from the date of the closing of the hearing, or the receipt of a transcript and any posthearing briefs, or if oral hearings have been waived, then from the date of receipt of the final statements and proof by the arbitrator, unless otherwise agreed upon by the parties or specified by law. However, a failure to make such an award within 30 days shall not invalidate an award.

SEC. 1404.10 **Arbitrator's award and report.**

(a) At the conclusion of the hearing and after the award has been submitted to the parties, each arbitrator is required to file a copy with the Service. The arbitrator is further required to submit a report showing a breakdown of his fees and expense charges so that the Service may be in a position to check conformance with its fee policies. Cooperation in filing both award and report within 15 days after handing down the award is expected of all arbitrators.

(b) It is the policy of the Service not to release arbitration decisions for publication without the consent of both parties. Furthermore, the Service expects the arbitrators it has nominated or appointed not to give publicity to awards they may issue, except in a manner agreeable to both parties.

SEC. 1404.11 **Fees of arbitrators.**

(a) No administrative or filing fee is charged by the Service. The current policy of the Service permits each of its nominees or appointees to charge a per diem fee for his services, the amount of which is certified in advance by him to the Service. Each arbitrator's maximum per diem fee is set forth on his biographical sketch which is sent to the parties at such time as his name is submitted to them for consideration. The arbitrator shall not change his per diem fee without giving at least 90 days advance notice to the Service of his intention to do so.

(b) In those rare instances where arbitrators fix wages or other important terms of a new contract, the maximum fee noted above may be exceeded by the arbitrator after agreement by the parties. Conversely, an arbitrator may give due consideration to the financial condition of the parties and charge less than his usual fee in appropriate cases.

SEC. 1404.12 **Conduct of hearings.** The Service does not prescribe detailed or specific rules of procedure for the conduct of an arbitration proceeding because it favors flexibility in labor relations. Questions such as hearing rooms, submission of prehearing or posthearing briefs, and recording of testimony, are left to the discretion of the individual arbitrator and to the parties. The Service does, however, expect its arbitrators and the parties to conform to applicable laws, and to be guided by ethical and procedural standards as codified by appropriate professional organizations and generally accepted by the industrial community and experienced arbitrators. In cities where the Service maintains offices, the parties are welcome upon request to the Service to use its conference rooms when they are available.

ELEMENTS
OF
STRIKE CONTINGENCY
AND
RESOLUTION PLANS

U.S. CIVIL SERVICE COMMISSION
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WASHINGTON, D. C. 20415

RN IV-6

ELEMENTS OF STRIKE CONTINGENCY AND RESOLUTION PLANS

Despite all the positive steps management may take, the distinct possibility exists that strikes or other militant group actions may occur. Because of this possibility management must be prepared. Management should develop a strike contingency plan in order to be able to carry out the following:

- To meet such commitments as:
  - Providing uninterrupted service to the public.
  - Assuring availability of supplies and materials.
  - Continuing jobs performed by contractors.
  - Establishing ultimate limits to which the agency can go, using its own resources, to assure continual service.
- To maintain security (plant, personnel, equipment).
- To meet maintenance requirements.
- To assure that the rights of employees who work during the strike are maintained.
- To maintain effective communication throughout the organization.
- To assure that appropriate legal action can be taken.
- To maintain public protection and safety. Protection of managers, working employees and agency property.
- To establish critical needs and their priorities.

PREPARATIONS BEFORE THE STRIKE OCCURS

- Develop training programs to instruct key people in the techniques needed to man production operations, the legal rights of the employees during strikes, and other pertinent matters.
- Prepare a strike plan showing the who, what, when, where, and how of organizational activity in the period prior to the job action.
- Select the communication channels with managers and non-striking employees.
- Select the means and methods of communicating with employees prior to the job action, during the job action, and after the job action.
- Determine the extent and nature of the information needed in decision making and communication processes. This is exploratory for time changes both the type and quantity of information desired.
- Evaluate the union or community group and its leadership. This should probe financial, leadership, and organizational strengths to analyze the union's or other group's ability to resist agency demands.
- Appraise key people in managerial ranks to determine who can and will perform specific tasks during job actions.
- Explore the use of temporary employees.
- Determine the availability of assistance from nearby cities and agencies.
- Investigate the possibility of contracting out to continue services.
- Determine steps to assure delivery of essential supplies and materials.
- Establish position on continuation of work by contractors.
- Develop initial relationships with various news media to feel out their general position and to suggest ways of overcoming negative reactions.
- Consider the following methods of communication and how they might be utilized during a strike: direct letters to homes, agency meetings with taxpayers, press releases, press conferences, community telephone "hotline" or "rumor control" center.

- Develop a time table for actions during the course of a strike.
- Announce, in advance, agency policies with respect to strikes.
- Establish a climate for effective labor relations so that strikes can be avoided.

THE CONTINGENCY PLAN AND ITS IMPLEMENTATION

Carrying On Services

- Determine whether services should be carried on or not, depending on the nature of the strike.
- Determine essential jobs and work that has to be done.
- Determine deployment of non-striking employees and supervisors.
- Initiate procedures for enlisting outside employees if necessary.

THE NEGOTIATING TEAM

- Determine actions of negotiation team during the strike.
- Determine whether negotiations will continue during the strike.
- Determine use of mediators and fact finders.

COMMUNICATIONS WITH THE PUBLIC OR PUBLIC RELATIONS

- Determine how much and what information will be released.
- Decide how to present the management story in the best way.
- Establish public information officer as sole contact on agency position.
- Make sure all community leaders are aware of the issues and the agency's position on the issues.
- Make sure that taxpayers and community leaders are kept up to date on the strike.

INTERNAL COMMUNICATIONS

- Keep the "management team" informed.
- Provide mechanisms for feedback.
- Present a unified front.

EMPLOYEE COMMUNICATIONS (PERSUASION)

- Make sure all employees know the issues in dispute and management's side of the issues.
- Make sure all employees know the agency's position in regard to refusal to provide services.
- Make sure all employees know they risk disciplinary action if they violate the law, or agency rules or regulations.

SECURITY

- Provide police protection against possible violence on the picket lines or against employees crossing picket lines.
- Provide protective measures for workers and equipment in the field.
- Provide security for police-fire communications.

ADMISSION TO AGENCY PREMISES

- Determine who will be admitted: employees, newsmen, union officials, etc.
- Determine the means of identification to be used.

PAY POLICIES

- Determine when pay policies relating to the strike should be announced.
- Determine whether strikers will be allowed to charge strike time to vacation or sick leave.

PAY POLICIES (Cont'd)

- Provide for payment for work done before the strike began.
- Set up methods for determining who is sick and who is on strike.
- Establish a policy on non-striking employees who will not cross a picket line.
- Determine whether there will be overtime or other premium pay for non-strikers who carry on services.
- Determine what legal steps will be taken, if any.
- Explore possible use of injunction and its possible ramifications.
- Determine action relative to strikers who violate strike orders.
- Determine penalties, if any, for strikers.
- Make a file of all statements by employee organization leaders mentioning withdrawal of services, with time, dates, witnesses, and a written account of statement.
- If a temporary restraining order is granted, notify as many of the striking employees as possible, especially the employee organization's leaders, that the strike has been enjoined and that they are required to return to work. Make a file of all such employees contacted, setting forth who was contacted, by whom contact was made and at what time the contact was made.
- Make a file of all activities which are disruptive in nature.

SPECIAL PROBLEMS

Racial overtones.

Community implications.

Maintaining communications with union leadership.

Variables Impacting on The Resolution of the Job Action

Intra-Organizational Variables

- To what extent are management personnel available with the skills to operate the facilities and equipment?
- How many employees can be transferred from other departments not affected by the strike?
- Is there adequate security from threats, harassment and violence provided to working employees, volunteers, and the public?
- What is the impact of the strike on non-striking employees inside and outside the bargaining unit?

Legal Variables

- What penalties are available to impose on the union or striking employees?
- What are the procedures for instituting these legal sanctions?
- How enforceable are these penalties?
- Or, how do you enforce these penalties?

Labor Market Variables

- What is the availability of replacement labor in the local labor market?
- Is the local replacement labor willing to cross a picket line?

Community Group and Union Variables

- What is the union or community group's motivation for going to a strike or job action? For example, is it to show strength, to achieve legitimate gains, to save face, etc.?
- What is the percentage of union or community group membership or support in the total work force and what impact does this exert on worker attitudes?

Community Group and Union Variables (Cont'd)

- What are the financial resources of the local union or the community group involved in the job action?
- What can be the expected support of other unions or groups?
- What is the ability of the leaders involved in the job action?
- What is the overall ability of the organization to maintain a long-term strike?
- What is the ability of the organization to change the agency's position by community pressure?

Inter-Organizational Variables

- Can replacement labor be acquired without precipitating violence and emotion?
- Can members of the bargaining unit be induced to cross the picket line without precipitating violence and emotion?
- How effective will legal sanctions be on the union or community group?
- Will the imposition of any combipation of the above three factors have a deleterious effect on bargaining and resolving the impasse?
- What will be the impact of these decisions on the post strike relationship with the union or community group?

Resolving Union Job Actions

- Secure a firm agreement from the union not to take action against or discipline those employees who refuse to participate in the strike or who returned to work voluntarily.
- Be prepared to handle such union demands as: no reprisals against strikers; return to work with full seniority and promotion rights; withdrawal of all employer legal actions; employer full pay for all welfare benefits such as insurance and pensions during the period of strike.
- Be prepared for taxpayers' suit to force management to invoke punitive features of no-strike law.
- Consider possible disciplinary action against employee organization: withdrawal of check-off privileges, suit for damages.
- Prepare a joint statement with the union announcing the end of the strike and containing brief features of the settlement.
- Inform your clients, customers, suppliers, and contractors of the end of the strike.
- Prepare a statement explaining the strike settlement, conditions of return which includes the possibility of disciplinary action against strikers.
- Consider full amnesty or limited amnesty to strikers who return by a certain date.
- Consider holding individual hearings to determine recommendations for discipline (after strike is over).
- Consider possible disciplinary actions against strikers: written warnings, pay freeze, temporary leave without pay, demotion, termination of employment.
- Deal firmly and promptly, through established legal procedures, with all forms of threats and reprisals directed against employees or agency property.
- Inform the management team that they should work to make the transition back to work as smooth as possible.
- Reduce bitterness as much as possible.
- Intensify upward and downward communications.
- Establish a policy for overtime work resulting from the loss of work during the strike.

Resolving Non-Union Job Actions

- Meet with the group to find out what it is they want.

- To the extent that demands fall under the collective bargaining agreement, direct the non-union group to union officials.

- Make union officials aware of non-union group demands that fall within the bargaining agreement or possible scope of bargaining.

- Attempt to persuade the union to take into consideration the non-union group needs that relate to it as the collective bargaining representative.

- To the extent the issues are outside the scope of bargaining of management and the union, direct the non-union group to the appropriate agent or agency.

- Refuse to bargain on those issues that fall under the bargaining rights of the exclusive representative.

- Give notice of possible disciplinary or legal action if the non-union group continues their disruptive activity.

- If necessary, take disciplinary and/or legal action to stop the job action.

A CHECKLIST OF ACTIONS NECESSARY FOR EFFECTIVE CONTRACT IMPLEMENTATION

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, DC 20415

RN VI-1

A CHECKLIST OF ACTIONS NECESSARY FOR EFFECTIVE CONTRACT IMPLEMENTATION

SIGNING THE AGREEMENT

Once agreement on the issues is reached by the respective bargaining teams, the agreement must be introduced as the "new law" under which the parties are to live in the work place. Often the signing of the contract is given no particular significance, but is only the hurried end of an often long and tiring process of negotiation. It is suggested that both employees and management team members, who after all were not present during those long hard sessions, should feel that the signing of a labor-management agreement is a serious, important, and distinctive occasion and that both parties feel that way. Consideration should be given to a formal ceremony with appropriate union and management officials present. Each side should stress the importance of the agreement and pledge mutual aid and wholehearted support during its duration. Efforts, such as these will help impress the importance of labor management relations.

PRINTING AND DISTRIBUTING THE AGREEMENT

Often, arrangements for printing and distributing the agreement are a part of the formal bargaining process and details concerning these steps are negotiated. If not, informal agreement as to printing and distribution should be worked out by the parties immediately following agreement on the substantive issues. Generally, the parties can agree as to format, quantity, printer, etc. Attention should be given to presenting the agreement in an interesting manner to encourage reading. If possible, avoid mimeograph format. The contract should be readable and, if possible, pocket size so it can be easily handled and carried.

Regarding distribution, management must make sure that all employees in the bargaining unit receive copies of the agreement and that all members of the management team likewise receive copies. While it can be assumed that the union will distribute copies of the agreement to its members, management is obligated to see that all employees covered by the agreement receive copies. Consideration should be given to allowing the union to distribute to non-members. After all, it costs nothing, and may help get relations off on a good note. However, management should police the situation to make sure that non-members actually receive copies of the agreement. Of even greater importance, obviously, is making sure that every supervisor in the union receives a copy of the agreement. All supervisors should be instructed to read the entire agreement carefully and make notes on any provision on which they have questions.

PREPARING WRITTEN INTERPRETATION

Meanwhile, the management negotiating team should prepare a clause by clause interpretation of what the agreement means. It is suggested that adequate space be provided so that people will be able to take notes as well as modify later if changes are dictated by third party decision or changes in law or regulation.

TRAINING AND ORIENTING THE MANAGEMENT TEAM

Within a few days after distributing the agreement to all members of the management team, schedule conferences at which supervisors can raise questions and receive explanations of the entire contract. These conferences should be conducted by members of the management negotiating team. Among the items that should be covered by such a meeting are the following:

- A brief explanation of the background of the negotiators, the time and work involved, and the objective of the agreement
- Emphasis on management team with first and second line supervisors as essential part
- Need to be thoroughly familiar with the agreement, and responsible for its proper administration
- Explanation of each article, – answer any questions

- Explanation of any oral commitments made which are not included in the agreement – the written vs. the unwritten contract

- Explanation of procedures to be taken when an employee or the union raises a question regarding the agreement

- Emphasize the need for uniformity in administering the contract

- Emphasize the necessity for reviewing the agreement each time a question is raised

- Emphasize the need for supervisors to keep records of each question or grievance raised by an employee or the union regarding the agreement

- Emphasize the need for keeping the negotiating team informed of any special problems created for supervisors by particular of the agreement

- Emphasize the role of the steward and the grievance procedure

- Explore potential areas of misunderstanding

In the event any question arises which cannot be readily and properly answered, temporarily defer discussion until management's negotiating team can consider the question and furnish an answer. Maintain a record of all questions raised and all answers given. If the union management relations are such as to make it feasible, the possibility of some joint supervisory-steward sessions on interpretation of the contract should be considered as a possible way to avoid costly disagreement later in the agreement.

In addition to these contract orientation conferences, management should plan and execute an ongoing labor relations training program for the management team covering in depth all aspects of the collective bargaining process.

ADMINISTERING THE COLLECTIVE BARGAINING AGREEMENT

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ADMINISTERING THE COLLECTIVE BARGAINING AGREEMENT

Chapter 1 . . . . Agreement Administration - General

Chapter 2 . . . . Consultation and Communications

Chapter 3 . . . . Joint Committees

Chapter 4 . . . . Steward System

Chapter 5 . . . . Use of Agency Time and Facilities

Chapter 6 . . . . Resolving Rights (Grievance) Disputes

- Grievance Procedure and Arbitration
- Disputes Arbitration Between Union and Employing Agency
- Arbitrability
- Past Practices - Case Decisions
- Equal Employment Opportunity Complaints
- Other Employee Complaint Resolution Systems

Chapter 7 . . . . Resolving Problems in Agreement Administration; Agreement Revision

Administering the Agreement

Chapter 1 - Agreement Administration - General

Having negotiated and executed a written agreement or memorandum of understanding, and following ratification by the union membership and approval by appropriate management levels, the agency, activity or installation is now faced with the difficult task of administering the negotiated agreement for the period spelled out in the contract.

The administration of any collective bargaining agreement falls on the shoulders of management. (The union polices the agreement through the steward system and the grievance procedure.) The tenor of that administration will weigh heavily on the type of relationship that develops between the parties, not only during the terms of the present agreement, but at future negotiating sessions and in future agreements.

Too often, the administration of a collective bargaining agreement gets an extremely low profile compared to the energies expended by an activity in pre-negotiation planning and actual negotiation strategy. Yet, it is a truism that what happens during the life of the negotiated agreement will bear on how well, or how poorly, the installation accomplishes its mission through the efforts of its represented employees.

The primary step in administering the negotiated agreement is for supervisors and management of the agency to know what has been agreed to between the parties, and possibly as important, what has not been agreeed to. Mere reading of the words will not suffice. The activity negotiating team was no doubt composed of very few people. Unless there is a single individual in the activity who is ultimately responsible for the overall administration of the negotiated agreement and he (Personnel Director, Labor Relations Officer) was also a constant part of the pre-negotiation and negotiation process, the accurate administration of the agreement can be impaired even before its inception. Items that were of major consequence to the activity in negotiations can be watered-down or lost entirely in the faulty administration of a labor agreement. Different members of supervision and management cannot administer the words and phrases of the contract as they understand and interpret them. Rather, they must attempt to give those words and phrases the meaning and intent that the parties agreed to in negotiations.

Activity-wide understanding of what the contract calls for is dififcult at best, but it is an essential part of efficient and effective administration. It must be recognized that the contract cannot cover every conceivable situation that will arise during its lifetime. Like the Constitution of the United States, it must be interpreted for new and revised situations that occur regarding the working conditions of the employees covered by the agreement. As the Supreme Court of the United States interprets the U.S. Constitution, its decisions are not universally admired. Likewise, in a labor-management relationship, the parties set up a grievance procedure to resolve not only violations of actual contract provisions but applications and interpretations of the meaning of the contract. Decisions emanating from the grievance procedure will favor the activity in some cases, the union in other cases, and neither party on occasion. These decisions, whether arrived at by arbitration or concessions by either party, become the building blocks of contract administration. In addition, traditional practices followed by the parties and not specifically covered in the agreement form an important part of contract administration – "past practices." It is essential to keep accurate records of all grievance settlements and arbitrator's decisions.

The possibility of third-party determination of grievance settlements focuses even more importance on the past practices between the parties. "Past practice" is defined as, and includes, management practices not covered in the agreement that have been established over a period time, which have gone unchallenged by the union, or are followed regardless of what is stated in the contract. Past practice will be used by the union in pursuing a grievance and by the agency in defending a grievance. Where the negotiated agreement calls for arbitration, the activity can be assured that the impartial arbitrator will look to past practices to try and determine the intent of the parties.

Of importance in this regard is whether the negotiated agreement is a continuing agreement that has been renewed upon expiration or whether it is the activity's first contract with a particular union.

If the agreement is a continuing one, the parties have already built up in their administration of the agreement considerable "past practices" in that

administration. Depending on an activity's strength of administration these past practices can be helpful or harmful in the day-to-day relationship between the parties. This array of past practices can be significant as a guide to what the "words mean" and the intent of the parties. Normally when a collective bargaining agreement is renewed and the parties have not agreed to change the language in a section or article of the contract, the installation would be on tenuous ground by changing the "past practice" of what was done under that section or article.

When there have been language changes in a continuing agreement, it is paramount that those in the activity who administer the agreement know the intent of the parties when they changed the language. Talking with the management negotiating team, examining all notes, records and minutes of the negotiating sessions, researching past grievance and arbitration decisions bearing on the changes, will help in the accurate administration of the agreement, but it will not solve all the problems that arise. There can and will be genuine differences of opinion between management and the union on what the contract changes mean. When that occurs the solution must be reached through consultation between the parties or use of the negotiated grievance procedure over the application or interpretation of the agreement. Generally speaking, language changes in a continuing labor agreement are thrashed out in the negotiation process and both sides have a meeting-of-the-minds on what those changes mean at that time.

When an activity and a union sign their first agreement there is less in the way of past practice to look to (except practices that operate under activity rules and regulations), and the intent of the negotiators is even more important. However, in most collective bargaining agreements there is prevailing practice on the meanings of certain words and phrases. In a dispute in this area management should look to generally accepted meanings. Of course, the activity can explore the whole range of collective bargaining agreements in other activities by a particular union and the meanings given to similar words and phrases in those agreements.

The important relationship between past practices and the administration of the agreement is that activities must not allow what will become "past practices" to develop helter skelter and without the approval of appropriate management. Decisions of supervisors, management answers on grievances, management commitments to unions must be researched and thought through if management is to prevent "past practices" from developing into adverse decisions against the activity in future grievances and arbitration. Generally speaking, one or two isolated incidents would not bind an activity to "past practice" but, unless the activity is alert in monitoring its actions, these isolated incidents can become established past practices over a period of time.

Whether the negotiated agreement is a continuation of an existing one or is a new agreement with a new union, the task of efficient and effective administration of the agreement is monumental. While few negotiate the agreement, many administer it. In the agency, every supervisor and manager has the authority to commit the activity in the administration of the agreement. The supervisors and managers must either have the knowledge of the intent of the agreement or be able to secure that information in a timely fashion from the activity labor relations personnel. Since solution of employee problems or grievances at the activity's lowest level is a hallmark of effective labor relations, the first-level supervisor must know how far he can go to settle a problem or resolve a grievance, without surrendering in administration what the activity would not surrender in negotiations.

The training of supervisors and managers in labor relations, contract administration and human relations must be viewed as a continuing education process, not just a one day or two day session in the first week or month of the new agreement. If the contract between the agency and the union is to be a living document rather than a collection of words, supervision, especially at the first level, will assume a large role in the determination of whether or not a mature relationship develops between the parties. The bilateral relationship developed between the parties, primarily through the first-level supervisor, will have an impact for good or bad on the role and mission of the agency.

In the administration of the agreement, the activity should have a strong labor relations function to furnish support and guidance to supervisors and managers in the day-to-day administration of the agreement. The supervisor or manager cannot be an expert in all facets of the agreement and he should be able to call for, and receive, sound technical advice and guidance as needed. Overall, the activity labor relations function must also insure

that the terms and provisions of the negotiated agreement are being met and lived up to by supervision and management. Since the negotiated agreement is binding on both parties, the activity labor relations function must insist on compliance by both parties. The absence of compliance can only lead to increased demands for mandatory third-party determination of disputes, which is clearly less desirable than mutual solutions to problems by the parties.

In summary, the job of the agreement administrator is to see that the activity does no less or no more than what the parties intended in negotiations. But the administrator does not exist in a vacuum. He must balance carefully the legitimate right of the union to discuss working conditions not specifically covered in the agreement with attempted union encroachments on management's inherent rights to manage the activity and direct the work force to accomplish the role and mission of the agency. He must do this through the efforts of scores of other supervisors and managers, all capable of committing him and the activity to a particular course of action. He must deal with a union structure which in some instances will seee conflict situations between the legitimate needs of the union as viewed by the steward and the legitimate needs of the activity as viewed by the supervisor. Through all of this, he must strive to maintain a relationship between the activity and the union that meets not only the requirements of the contract, but the spirit of the contract as well.

Chapter 2 - Consultation and Communications

In the treatment of consultation and communications between the activity and union it is prudent to separate the obligation of the activity to consult, confer and negotiate and the need, by way of good management techniques, to communicate with the union in the day-to-day administration of a labor agreement.

Exclusive recognition, requires the activity to offer the exclusive union the opportunity to be present at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices or other matters affecting general working conditions of employees in the exclusive unit.

The concept of good faith requires the activity to meet at reasonable time and confer and negotiate with the exclusive union.

There are certain items about which management is generally not required to consult upon. These items are:

(1) the mission of the agency
(2) the budget of the agency
(3) the organization of the agency
(4) the number of employees
(5) numbers, types and grades of positions or employees assigned to an organizational unit, work project or tour of duty
(6) the technology of performing its work
(7) the internal security forces of the agency

This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

It is an unfair labor practice for either party to refuse to consult, confer, or negotiate as required by good faith and state law.

Management does not have to consult and confer with an exclusive union when it makes no changes in the agreement but merely continues established past practice.

It is important to point out that managers make the day-to-day decisions in running the activity without consultation with the union. Activity management makes the decisions and takes the actions which unions may challenge through the negotiated grievance procedure.

In the area of communications with the union, activities should communicate and confer with the union in furtherance of attaining a mature relationship between the parties. The relationship the parties have must be given attention in the day-to-day administration of the agreement if that degree of maturity is to be reinforced and retained. This attitude does not imply that the agency is looking for assistance or co-management in running the agency, but rather is seeking an avenue for soliciting the advice and views of its employees whose sole agent is the exclusive union.

Once a union has exclusive representation, it represents all of the employees in the unit whether or

not they are members of the union or pay dues to the union and management is required to deal with its employees in that unit bilaterally through their collective representative. It may no longer deal unilaterally with its employees as it may have done in the past.

There is another important aspect concerning communications between the activity and the exclusive union and that is the role of the first-level supervisor.

As in all aspects of agreement administration, this one individual is "the agency" to most of the employees and he is "the agency" to most of the union's representatives through the union's steward structure. It is imperative that this level of management know what the activity's policies, programs and procedures are that affect the working conditions of the employees. Moreover, he should be consulted by higher management for his views and recommendations when those policies and procedures are subject to change.

Regardless of the activity's past practice in delegating authority and responsibility down the line to its first-level supervisors, the growth of exclusive union recognition adds new impetus for agencies to review the authority they allow the first-level supervisor. In a typical situation, the first-level supervisor will face a union steward who has been given considerable authority by the union to settle problems, instigate grievances, push grievances through the system or withhold or withdraw grievances. The supervisor without appropriate authority to act on these problems and grievances will, of necessity, be forced to buck them up-the-line to the next level of management. Not all grievances can be solved in the first step, but as a grievance goes up the line for solution, numerous things occur detrimental to the activity i.e., costs increase, more employee time is devoted to the grievance, more management time is devoted to the grievance, the employee filing the grievance waits longer for an answer and possibly most important, the activity has undermined its "key" employee in a labor-management relationship – the first-level supervisor.

Chapter 3 - Joint Committees

The activity may wish, in order to provide employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment, to consider setting up Joint Committees between management and the union.

These joint committees would normally be in vital specialized areas affecting the employees in which both the activity and the union have an important interest, such as safety. Other joint committees might be established in areas such as Equal Employment Opportunity, Employee Incentive Award Programs, etc.

If joint commitees are established, the administration of the agreement will be eased if the role and mission of the committees are included in the negotiated agreement with attention given to the number of union representatives on the committee, the length of their assignment on the committee, the numbers and frequency of committee meetings, attendance requirements, the pay status of the union representative(s) when engaged in such meetings both during normal working hours and on premium time, and whether or not the committee's reports and recommendations are binding on management or merely advisory.

If the agreement is silent on joint committees, the activity should look to their past practices. If they have not had joint committees, the agreement administrator must establish reasonable rules for union members of the committee consistent with reaching the goals of the joint committeee.

If joint committees are established between the parties, the agreement administrator should insure that all bars to effective workings of the committee(s) are removed and that the committee's reports and recommendations receive the consideration due them with appropriate activity management.

Chapter 4 - Steward System

Since the steward system is to the union what management is to the agency, management involvement with the steward system places the activity in one of the most delicate and potentially explosive aspects of overall contract administration. This, however, does not lessen the activity's requirement to monitor the operation of the system. It only pinpoints an area of contract administration that can be subject to great conflict.

To discount or minimize the possibilities for conflict between the steward system and agency supervision and management is to ignore the dynamics of human relationships in such an environment and the long history of conflict in private and public labor-management relations. Recognizing and accepting the fact that there will be conflict, the agreement administrator must address himself to seeking resolutions of those conflicts in order that the more important job of overall contract administration can continue for the life of the agreement. Conflicts concerning the steward system, left alone or only partially resolved can fester to the point where little can take place in the arena of a bilateral relationship. Clearly, monitoring the steward system will test the mettle of most agreement administrators.

The basis for monitoring the steward system will be that part of the negotiated agreement dealing with the rights and duties of union representatives. Where the language in the contract is broad and general on the rights and duties of union representatives, the activity must look to its past practice in this regard.

Since most collective bargaining agreements provide that union representatives can pursue legitimate representational duties on official time, the activity must monitor that time and activity to insure itself that use of official time is for legitimate purposes. Most union representatives – in addition to their role of investigating problems, processing grievances, policing the terms of the collective bargaining agreement, meeting with activity management and negotiating with management – have other roles such as recruiting new members, collecting dues, informing workers on the advantages of the union, etc. These other roles of the union representative, generally attending to the internal affairs of the union organization, should be forbidden except during the non-duty hours of the employees involved.

Clearly the activity does not want to pay for union representatives attending to internal affairs of the union on official time. It does want to insure that union representatives are not harrassed or subject to complex and difficult past procedures in using official time for the legitimate representational duties that the union representative is required to perform for the employees.

This type of monitoring is difficult as each union representative is an individual differing from the next union representative. Efforts by the activity to insure itself that use of official time is not being abused will be interpreted by many union representatives as attempts to deny them their legitimate rights to represent the employees in the unit.

Management which negotiates use of official time for legitimate union representation has the right and the responsibility to monitor that activity to insure it is in compliance with the negotiated agreement. Still, it must administer in this area evenly and with wisdom, so that its actions cannot subject it to a charge of interfering in the legitimate rights of union representatives. When an activity, as objectively as possible, finds that use of official time is being abused, management should go to the leadership in the union and request that the leadership assist management in insuring that its representatives use official time only to the amount necessary for pursuing duties outlined in the negotiated agreement.

If an activity shies away from monitoring the steward system because of the difficulties involved and the potentials for conflict between the steward and the supervisor, it will, over a period of time, establish some past practices that will be difficult, if not impossible, to control in the future. Lax monitoring or none at all in this vital area will almost certainly lead to increased abuses of official time by individual union representatives. Harsh and overbearing action in this area will result in constant conflict between the steward and the supervisor to the detriment of the parties' relationship. Again, management and supervision must walk the middle ground of reasoned activity that allows for legitimate representation to take place without excessive costs to the agency or abuse of the purpose of official time.

Fair, objective and even contract administration is not a synonym for anti-unionism and installations would be advised to impress that point on all members of the management team.

Chapter 5 - Use of Agency Time and Facilities

As mentioned in the previous chapter on the steward system, management has the right and indeed the responsibility to monitor the use of official time in connection with representational duties of union representatives. This same principle applies to all areas where the parties have negotiated the use of official time in their negotiated agreement, such as joint committees in Chapter Three (3) and the

grievance procedure and arbitration in Chapter Six (6).

Without an objective attempt to monitor the use of official time by union representatives, the activity will be hard-pressed in the next negotiation session to pinpoint its costs, to discuss areas where it feels the union is excessively using official time or abusing the purposes intended, or to evaluate the impact of demands by the union for increased use of official time in existing aspects of the agreement or demands for the use of official time for other aspects of the agreement.

If the parties, prior to contract negotiation, negotiate some number of hours for union representatives, the activity will have to set up a procedure of record, at each session, the names of the authorized union representatives and the hours spent in negotiation sessions in order that proper payment may follow. Time spent in negotiations during regular working hours includes the time from preliminary meetings on ground rules, if any, through all aspects of negotiation, including mediation and impasse resolution processes when needed. A clear understanding between the parties is required as the contract may carry a provision for reopening, and the time agreed to should take this into consideration during the original negotiations between the parties.

As in the case of official time, the installation should periodically monitor the use of its facilities by labor organizations to insure itself that the union is using facilities for the purpose (s) intended by the parties. If the parties negotiate use of agency facilities (office space, mail service, telephone service, meeting rooms, etc.) by unions, it is advisable for the parties to have a clear and concise understanding of the use of which the activity facilities are to be put by the union.

Management must keep in mind, especially in administration of the agreement, that there is a distinct difference between the use of official time and activity facilities by a union which has exclusive recognition and which enjoys these options as a result of an agreement between the parties, and the use of official time and activity facilities by the same union when it is engaged in organization activities or election proceedings with another union. An exclusive union enjoying use of official time and activity facilities in its representation function may commit the activity to offer intervening union(s) the same privileges if the exclusive union uses that time and those facilities in an election or organizing campaign. The agreement administrator must insure that this situation does not occur without management approval.

Ideally, when use of official time or agency facilities are agreed upon, the parties should reduce this to writing in their basic agreement, clearly outlining the rights and duties of union representatives and their responsibility in using official time or activity facilities in pursuit of the union's representational duties.

Most agreements specify that the use of official time by union representatives shall be a "reasonable" amount of time to perform the duty at hand. The term "reasonable" is very subjective, meaning different things to different people. Appropriate records should be kept to provide a basis for reasonable monitoring. These records and management's attempt to fairly and evenly measure and monitor this time will point, in time, towards a definition of "reasonable" They will also highlight individual cases of abuse or excess which should be brought to the immediate attention of the exclusive union leadership for solution.

Chapter 6 - Resolving Rights (Grievance) Disputes

Grievance Procedure:

The negotiated grievance procedure is in reality the foundation on which contract administration revolves. Management should take care to see that the procedure is responsive to its needs in a bilateral relationship.

While there is no one ideal grievance procedure, certain items are recommended to activities for exploration before agreeing to a grievance procedure. The following is not meant to be a complete list of items for inclusion in the contract. The activity may wish to consider many other items:

A. Concerning the Grievance Procedure Itself

1. As a matter of sound management and labor relations, the initial step in the

procedure should involve the employee's immediate supervisor.

2. While most grievance procedures are formal and the grievance is in writing, the activity may want to explore a mandatory or permissive "oral" or informal step between the employee and his immediate supervisor (and the union representative, if the employee wishes him to be present), prior to proceeding into the formal steps of the procedure.

3. As a matter of record-keeping and necessity, the activity will want to insure that in a grievance procedure, the grievance is in writing and proceeds through the steps of the procedure in accordance with agreed-upon time limits in each step. It is preferable to insert a statement in the contract to the effect that both parties agree to abide by these time limits.

4. The agency may wish to supply a specific grievance form, uniform in the bargaining unit, for all steps of the procedure.

5. The activity may wish the procedure to provide that the affected employee has a right to be present at all steps of the grievance procedure (both during normal working hours and on premium time) but that overtime or premium time will not be paid for such attendance.

6. The activity may wish the contract to state that the moving party has the burden of proof in any step of the grievance procedure.

7. The activity may wish a provision that extension of time limits can be agreed upon only by written consent of the parties; and that if a grievance involves continuing financial liability on the part of the agency, the period of extension requested by the union and agreed to by the activity, shall not be counted in determining financial liability.

8. The contract should include a statement on computation of the time in the grievance procedure -- whether time limits referred to are calendar days or work days.

9. It should have a statement that no matter shall be considered under the grievance procedure unless it's filed within so-many days of the occurrence of the event on which the grievance is based, unless the circumstances of the case make it impossible for the employee or the union to know that grounds exist within such time period.

10. The agreement should require that all written grievances will disclose the nature of the grievance and all the facts on which it is based; the remedy or correction sought; the signature of the aggrieved employee or employees and/or the union representative presenting the grievance; and the specific sections or clauses of the agreement allegedly violated.

11. The agreement might include a statement that decisions rendered in each step, and properly signed by appropriate persons, shall be final and binding upon the parties, unless appealed to the next step of the procedure in accordance with agreed-upon time limits.

12. It should have a statement limiting the retroactive effect of a grievance decision especially where there is financial liability to the agency.

13. Management may want a provision that if the union allows the time limits to expire in any step of the procedure, the grievance shall be considered withdrawn from the system; and that if management allows the time limits to expire, the grievance automatically moves to the next step.

B. Concerning Union Representatives Implementing the Grievance Procedures

1. The agreement should have a statement recognizing union representatives for representational duties under the agreement.

2. It should include a provision that requires appropriate authority within the union to certify and decertify its representatives to management in writing.

3. Management may want the contract to include an affirmation that union representatives are full-time productive employees of the agency, if that is the case in the instant agreement, subject only to Item B. 1. above.

4. Management will probably wish a statement that union representatives are only recognized when they are "clocked in" and are not entitled to enter or remain on agency premises before or after their shifts without specific agency approval.

5. If the numbers of union representatives are tied to the total population of the unit, the contract should include a mechanism to revise union representation up or down during the term of the agreement. This mechanism should act in an expeditious fashion.

6. There should be a provision that when union representatives use official time for union business, they handle complaints, investigations and grievances promptly with a promise by the union that this will not be abused.

7. The agreement should spell out a pass procedure for union representatives going on union business on official time with specifics on how or where he obtains a pass; requirements to show pass to supervision before talking with that supervisor's employee; what management signatures are required on the pass; where he returns the pass upon his return from union business, etc.

8. The rights and duties of union representatives should be spelled out in the agreement.

9. The contract should include a statement concerning union representation during overtime, including the investigation and presentation of grievances during a period of premium time.

Arbitration Procedure:

Arbitration may or may not be agreed to, depending solely on negotiations between the parties. Generally, arbitration, like the grievance procedure, may only address itself to the application and interpretation of the negotiated agreement and not other matters. The arbitration clause, if negotiated, may be invoked by the activity or the exclusive union with or without the concurrence of the aggrieved employee.

Before agreeing to an arbitration procedure, whether advisory, binding, or a combination of both, the activity should explore the following items for possible inclusion in contract language. The list is not all inclusive and many other items may be considered by the agency:

1. The feasibility of having a "pre-arbitration" step between the last step of the grievance procedure and the arrival of the arbitrator to hear the case. This would give the parties an additional opportunity to solve the problem without third-party intervention.

2. The procedure for requesting arbitration; the mechanics of selecting an arbitrator; the matter of submitting statements to the arbitrator either by a joint submission of the parties of by individual submissions.

3. The time in which an arbitrator must hold the hearing once selected.

4. A statement indicating that the moving party has the burden of proof in any arbitration proceeding.

5. A statement indicating that the affected employee and his supervisor shall be entitled to be present at all times during an arbitration hearing.

6. A limitation on testimony and argument during the hearing to relevant and pertinent issues as framed by the joint

submission of the parties or the individual statement of each party's submission.

7. A statement limiting the power of the arbitrator so that he cannot add to, subtract from or modify the agreement between the parties.

8. A provision that either party may at their own expense have the arbitration proceedings reported and transcribed.

9. A statement that the arbitration decision will be furnished within so-many days of the closing date of the hearing; that it will be in writing with copies furnished to the parties; and if binding arbitration is negotiated, that such decision is final and binding on the parties.

10. A statement covering the expenses of arbitration – who pays and how much – including who pays for time lost by employees who are called as union witnesses or act as union counsel during the arbitration hearing.

11. A statement allowing the arbitrator to investigate, in person, activity premises relating to the matter at hand with attention to who shall accompany him during such investigation.

12. A provision that either party may cross-examine any witness of the other party and the arbitrator can question any witness at any time.

13. A statement on priorities the parties set up to arbitrate certain types of cases ahead of other types of cases. Also the method by which cases are scheduled to be heard once signed into the arbitration procedure. The activity should oppose any union attempt to pick a specific case first, then choose a specific arbitrator to hear that case.

Disputes Arbitration Between Union and Employing Activity:

When disputes arise between the exclusive union and the employing activity over the application or interpretation of the agreement, the avenue for solution is either consultation between the parties or the negotiated grievance procedure. In this regard, there is some difference between this type of dispute and a dispute between an individual employee of the activity who is represented by the union and the activity. Since the same procedure is to be used for disputes between the union and the activity and between an employee and the activity, the activity may wish to consider separate treatment in its grievance procedure for "employee grievances" as discussed earlier and "union grievances." Normally a "union grievance" over the application or interpretation of the agreement would have fewer steps in the procedure and would revolve around broad general questions, while an "employee grievance" would seek a specific remedy or solution for a problem of an individual employee or group of employees.

If separate treatment grievance language is negotiated, the activity must be cautious against being faced with "double jeopardy" on the same issue. For example, if a union files a broad general grievance on a matter and at the same time, earlier or later, five employees file individual grievances on the same matter, the activity would be in double jeopardy. Language would be required in the agreement which would preclude processing individual "employee grievances" if a "union grievance" had been filed on the same matter – or vice versa. If administered correctly, the "union grievance" would be filed when there is genuine broad general disagreement over the application or interpretation of the agreement or parts thereof between the exclusive union leadership (Union President, Business Agent) and activity management (Activity Head, Personnel Director, Chief Labor Relations Officer). The goal of the grievance would be should it arise again in the administration of the agreement and with no view towards an individual remedy or solution for an employee or a group of employees. Conversely, employees or groups of employees should not be filing broad general union grievances but only grievances that seek specified individual or group remedies or solutions to items of dispute.

The significance of two procedures would revolve around the use of arbitration as a culmination of the grievance procedure. If arbitration should include binding third-party determination, the activity would want to have written ground-rules, time limits, etc. relating to these "union grievances" as it has for "employee grievances." Such provisions would be against the arbitrator interpreting the intent of the parties in the absence of specific contract language.

Arbitrability

If the parties have negotiated a binding arbitration clause in their agreement, and a matter arises which is clearly arbitrable under the agreement, the activity would be prudent to carefully analyze whether it could lose more by an adverse decision of a third-party than it could gain by a favorable decision of an arbitrator. Third-party decision carries risks regardless of how well researched and deliberate the activity is in preparing its case for arbitration and regardless of how high the activity's level of confidence in winning a decision in arbitration. Arbitration should not and cannot be avoided in many cases. However, wherever possible, both parties would be urged to explore all avenues of compromise and solution prior to allowing a case to go to binding arbitration.

Past Practices - Case Decisions

Past Practices

As discussed in Chapter One, past practices between the parties will bear on the outcome of resolving rights (grievance) disputes and arbitration awards. Each side will use past practices as an offense or defense in the grievance and arbitration procedure. Generally, past practice includes all items specifically not covered in the agreement but followed by both parties or followed by one party and not challenged the other party over time; but it also includes the actual practice(s) being followed regardless of the contractual words in the agreement. It is not uncommon to find parties to an agreement jointly practicing items directly opposite to the words those parties agreed to in their contract and continuing to follow those practices from one agreement to the next without attempting to change the language of their agreement to reflect that practice.

Activities would be advised to periodically compare their negotiated agreements, item by item and clause by clause, against their actual administrative practices under those items and clauses. This would be particularly recommended in the pre-negotiation period in order that during the forthcoming negotiations, attempts might be made to revise the written agreement to reflect the intent of the parties and have that intent reinforced by the written agreement.

Case Decisions

As there is resolution through the grievance procedure and arbitration, the parties collect a series of decisions which aid in overall contract administration. Since these "case decisions" all arise out of the application and interpretation of the agreement, both parties can be expected to use them to guide their future actions when issues arise that are similar or the same as a particular grievance decision or arbitration award.

The effect of grievance decisions and arbitration awards stemming from "employee grievances" and those stemming from "union grievances" require separate treatment. Grievance decisions or arbitration awards stemming from a grievance of an individual employee or group of employees technically concern only the affected employees who instituted the grievance and not other employees. While any decision aids in overall contract administration, the activity is not bound to apply the results of a particular decision affecting one employee to all other employees in similar situations unless it makes a conscious decision to do so. For example, a similar "employee grievance" carried through to arbitration may result in an entirely opposite decision by another arbitrator as arbitrators are not bound by decisions of their colleagues.

Quite a different approach is recommended on the results of "union grievances" where the parties receive a decision that goes to broad general issues on the application and interpretation of the agreement. Here, a decision once received, should normally be followed for the remainder of the agreement. This is evidence that on broad general issues affecting, in general, all the employees in the unit, the parties, at the highest level of the union and the activity, can resolve significant differences between

themselves. Decisions on these broad general issues should not have retroactive features attached to them. Since a change in activity or union direction may be required over what was done previously, the decisions should be effective as of the receipt of the decision or award and applied only in future relations between the parties during the remainder of the term of the agreement.

Certainly it could be argued that if either party were not satisfied with the results stemming from a "union grievance," that party could carry a similar case to arbitration hoping for an opposite decision by another arbitrator. The net result of such action would be that during the term of the agreement, the parties would not be able to effectively resolve broad general issues between them. If the two organizations – union and management – can't resolve broad issues arising out of the application or interpretation of the agreement, they obscure the very concept of bilateralism in a collective bargaining atmosphere.

Chapter 7 - Resolving Problems in Agreement Administration; Agreement Revision

The negotiated grievance procedure discussed in Chapter Six will be the primary vehicle by which problems are resolved in agreement administration. Over and above this formal mechanism, the personal and professional relationships developed between the parties, especially between the leadership of the union and activity management charged with the responsibility of labor-management relations, will be instrumental in resolving day-to-day problems. The importance of this personal relationship cannot be overemphasized in promoting a harmonious labor-management relationship.

Most agreements provide for a mechanism to revise the agreement during its term. If such a mechanism is negotiated, the activity will want to consider the following items in its duration clause. This list is not meant to be all-inclusive:

1. A statement that the contract is in full force and effect for a specified period of time.
2. A statement that the agreement will terminate if the union is no longer entitled to exclusive recognition.
3. A requirement for written notice by either party to commence negotiations on a new agreement.
4. A statement requiring the opening of negotiations if changes are made in law after the effective date of the agreement, or statement that affected provisions are considered null and void upon enactment of law.
5. A provision that the contract may be reopened at any time if both parties agree.
6. A statement that if both parties don't desire to renegotiate the agreement on expiration, they will affix new signatures and dates.
7. A statement that the provisions of the new agreement take precedence over all prior agreements and understandings between the parties.

AREAS OF MANAGEMENT CONCERN FOR EFFECTIVE CONTRACT ADMINISTRATION

U. S. CIVIL SERVICE COMMISSION
BUREAU OF TRAINING
LABOR RELATIONS TRAINING CENTER
WASHINGTON, D.C. 20415

RN VI-3

AREAS OF MANAGEMENT CONCERN FOR EFFECTIVE CONTRACT ADMINISTRATION

THE NEED FOR A TRAINED MANAGEMENT TEAM

Effective contract administration requires that the entire management team understands and accepts bilateralism as an effective and productive problem-solving device which will benefit both employee well being and agency effectiveness and efficiency. Agency management should strive for adequate Labor Management Relations Training on a continuous basis for its management team. Among those "subjects" which should be covered are the following:

- The collective bargaining process and its implications for management
- Specifics of the agreement
- The grievance procedure and arbitration
- Supervisor-Steward relations
- Labor history and structure
- Human relations
- Communication skills
- Effective record keeping
- Uniform contract administration
- Third party processes
- Avoiding unfair labor practices

THE NEED FOR A MANAGEMENT HANDBOOK

Training alone is not enough. For effective day to day dealing with the union, supervisors need a handy reference guide. Almost always, unions provide their local officers and stewards with handbooks in order to assist them in fulfilling their duties. Many private and public employers are beginning to recognize the same need for their day to day representatives in labor-management relations.

THE NEED FOR RECORD KEEPING AND AN INFORMATION STOREHOUSE

It is important that management maintain a central bargaining book of all information necessary for effective contract administration and future negotiations. This central record keeping system should contain copies of written grievances and their disposition, arbitration awards and briefs under the current and also past agreements as well as copies of awards under similar contracts in the same agency, other agencies, or the non-public sector. Decision of third parties should be maintained. Labor relations resource services such as the Labor Relations Expediter or the Government Employee Relations Report should be obtained as well as copies of union publications, industrial relations and personnel journals. Finally a systematic method of obtaining, evaluation, and recording feedback from members of the total management team should be maintained.

THE NEED FOR CONTINUOUS PREPARATION FOR THE NEXT NEGOTIATIONS

As soon as the agreement is signed and implemented, management should begin preparing for the next negotiations. Keeping adequate and up to date records are a part of the process. The basic goal should be management's ability to anticipate the union's demands next time. This ability can be improved by studying grievance patterns, other labor management agreements, union newspapers and publications, analyzing feedback from supervisors, etc. A second goal of management's preparations should be to identify those areas management wishes to change in the existing contract and being preparing its case. One possible way this can be carried on is assuring that management has a staff of professionals of adequate size and ability who communicate regularly with the total management team.

Remember, a successful labor management effort never ends. Prepare . . . Prepare . . . Prepare!

SAMPLE GRIEVANCE FORM

Employee's Name Date

Classification Pay or Badge No. Shop or Office

Date Grievance Occurred

Date Grievance Submitted to Immediate Supervisor

Immediate Supervisor's Name Date of Reply

NATURE OF GRIEVANCE: On the date indicated above, a grievance occurred which I presented to my supervisor. His reply was not satisfactory to me and I, therefore, irrevocably elect to pursue my grievance through the Negotiated Grievance Procedure. The following specific action or administrative decision is appealed (give names, date, place, etc.):

The following corrective action is desired:

Signature of Employee Signature of Steward